

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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UNITED STATES OF AMERICA, :

Plaintiff, : Criminal Action No.

v. : 1:16-cr-10094-LTS

ROSS MCLELLAN, :

Defendant. :

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BEFORE THE HONORABLE LEO T. SOROKIN, DISTRICT JUDGE

JURY TRIAL
Day 3

Wednesday, June 6, 2018
8:32 a.m.

John J. Moakley United States Courthouse
Courtroom No. 13
One Courthouse Way
Boston, Massachusetts

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P R O C E E D I N G S

(In open court.)

THE DEPUTY CLERK: The United States District Court for the District of Massachusetts is now in session, the Honorable Leo T. Sorokin presiding.

Today is June 6th, the case of United States vs. Ross McLellan, criminal action 16-10094 will now appear before this court.

THE COURT: I see all counsel here, and Mr. McLellan.

So first with respect to the juror we had a discussion about. I spoke, at the very end of the day yesterday, with an HR person from the company. The bottom line is this: They have 130 employees nationwide, three in Massachusetts. He's the only person who does what he does in Massachusetts and the person who does it on the night shift can't do it on the day shift, because that person has a day job, and they don't have anyone to cover for him. The HR person had already spoken to the owner, who is in -- somewhere else, not where the HR person is. So I'm willing to make an exception to their policy and pay him for this period of time. So I think that's it.

I'm not -- I don't think I'm going to go further. I don't think I'm calling the owner and I don't think that I have any legal -- I don't think they're under any legal

1 obligation to pay. And I think that it could work out poorly
2 for the juror in the long run and I don't think that would be
3 fair.

4 So I'm going to -- unless one of you has an
5 objection or a suggestion, I'm going to bring him in now, or
6 as soon as he arrives, excuse him, explain, just tell him
7 everything and excuse him and send him on his way.

8 Anybody have any issues with that?

9 MR. FRANK: No, Your Honor.

10 MR. WEINBERG: No, Your Honor.

11 THE COURT: All right. Maria, if he's here, bring
12 him, and if not, as soon as he is, bring him in.

13 I don't think I have anything else, unless you do.

14 MR. WEINBERG: Two what I hope to be minor issues.
15 One is that Mr. Johnston, through Mr. Boomgaardt, or Mr.
16 Frank through Mr. Pennings, introduces their plea agreements.
17 I would ask the Court to give an instruction that that is
18 being offered for the limited purpose of providing the jury
19 with context as to why their testimony and is not evidence
20 substantive --

21 THE COURT: Not evidence -- substantive evidence of
22 Mr. McLellan's guilt.

23 MR. WEINBERG: Thank you.

24 THE COURT: All right. That's fine.

25 MR. WEINBERG: Second is, one of the witnesses

1 we've identified as a prospective witness is named Sean
2 Murphy.

3 THE COURT: Hold on one second. I just want to --

4 THE DEPUTY CLERK: Do you want me to grab him now?

5 THE COURT: Yeah. As soon as he's here.

6 I'm sorry, what?

7 MR. WEINBERG: One of the potential defense
8 witness, he would be in the nature of summary witness,
9 summarizing exhibits that would otherwise be offered into
10 evidence. Sean Murphy, he's a young lawyer that has worked
11 as part of our defense team. He was inadvertently in court
12 yesterday during Mr. Boomgaardt's direct. He was not here
13 when the Court issued a sequestration order. He didn't
14 understand that it applied to him. I want to put that on
15 record and I want to ask the Court's leave to except him from
16 the sequestration order.

17 THE COURT: Any objection?

18 MR. FRANK: We have no objection to that, Your
19 Honor. And actually, I think the same is true of our
20 rebuttal expert. So we would ask that the same reply to our
21 rebuttal expert.

22 I would renew my request with respect to Mr.
23 Murphy --

24 THE COURT: Hold on. Just with respect -- do you
25 have any objection to that exception for the rebuttal expert?

1 MR. WEINBERG: No.

2 THE COURT: All right. Fine. So both of them are
3 excepted.

4 With respect to sequestrations, since I have no
5 idea who the witnesses are, what they look like, I leave it
6 to all of you --

7 MR. FRANK: They're not coming in.

8 THE COURT: And if there's an issue, to bring it to
9 me.

10 MR. WEINBERG: Thanks.

11 MR. FRANK: What I understood Mr. Weinberg to say
12 now is that Mr. Murphy will be offering summaries of exhibits
13 that might otherwise come into evidence. What I understood
14 him to say yesterday was that he was going to be offering
15 summaries of the Government's exhibits. Once again, we
16 haven't seen any drafts. I'll just note for the Court, there
17 are thousands, if not tens of thousands of pages of trading
18 records, of foreign exchange records that Mr. Weinberg has
19 identified, with literally millions of lines -- millions of
20 lines of trades. It is probably, at this late date,
21 impossible for us --

22 THE COURT: Hold on one minute for that. I want to
23 take care of the juror and send him on his way.

24 MR. FRANK: Yes, Your Honor.

25 THE COURT: So bring him in.

1 (The jury enters the courtroom.)

2 THE COURT: So I just want to explain to you, sir,
3 where things are and I want to thank you for your cooperation
4 with us. I spoke -- Ms. Simeone spoke yesterday with an HR
5 person from your company.

6 THE JUROR: Okay.

7 THE COURT: And the HR explained the policy pretty
8 much as you understood it. If you're there a year, they'll
9 pay for everything, but if you're not there a year, then they
10 pay for -- I think she thinks they pay for nothing.

11 THE JUROR: Yeah.

12 THE COURT: I spoke to them late yesterday. I'm
13 sorry it was too late for me to let you know, so you didn't
14 have to come in today --

15 THE JUROR: That's fine.

16 THE COURT: -- but in any event and she reiterated
17 to that and I spoke to her, because I wanted to see whether
18 they could make an accommodation, given the public interest
19 and your willingness to serve, if you could afford to serve.

20 THE JUROR: Yeah.

21 THE COURT: And in any event, she said, no, they
22 can't make an accommodation. So I'm going to release you
23 from jury service, because I don't think it's fair to ask you
24 to spend a month working for us at the pay we pay you. You
25 just wouldn't be able to afford it. I understand that. So

1 I'm going to release you. I'm going to just tell you that
2 under Massachusetts state law -- and I said something along
3 these lines to the HR person, Massachusetts state law
4 requires employers in Massachusetts to pay people for
5 three days of Massachusetts jury service.

6 THE JUROR: Yeah.

7 THE COURT: So you could talk to them about that.
8 You'll be paid by us for the three days, but it's not at the
9 same rate that you make when you work.

10 THE JUROR: Yeah.

11 THE COURT: And Ms. Simeone will give you a card,
12 you can go downstairs and they'll explain to you how you get
13 what we pay you. And you can talk to them about them paying
14 you and it's possible that if -- that our jury office
15 downstairs, Mr. McAlear, might be able to help you with that.

16 Maria, would you e-mail him about that?

17 THE DEPUTY CLERK: Sure.

18 THE COURT: In the first instance, you just talk to
19 them and maybe they'll accommodate you and pay you for -- the
20 difference is what they would pay you for. They wouldn't pay
21 you for --

22 THE JUROR: Yeah. That's what I was told, yeah.

23 THE COURT: Right. Okay. So in any event, I
24 really thank you for your willingness to serve. But you're
25 excused from service on this jury, you're all done. Just go

1 downstairs to the jury office on the second floor and they
2 will tell you whatever you need to know about getting
3 reimbursed for these three days.

4 THE JUROR: Okay. All right. Thank you very much.

5 THE COURT: You're welcome.

6 THE JUROR: Can I get my stuff?

7 THE COURT: Yes.

8 THE JUROR: Thank you very much.

9 THE COURT: You're welcome.

10 (The juror exits the courtroom.)

11 THE COURT: Do either of you want me to explain
12 anything to the rest of the jurors as to why this juror has
13 disappeared?

14 MR. FRANK: Probably wouldn't hurt, Your Honor.

15 THE COURT: What would you like me to say? I think
16 just I've excused him for a personal matter.

17 MR. FRANK: Yes, Your Honor.

18 THE COURT: Okay. I interrupted you, Mr. Frank,
19 and I'm sorry.

20 MR. FRANK: The only issue, Your Honor, is I
21 understand Mr. Weinberg, today, to be suggesting that the
22 witness would not be summarizing Government exhibits, but
23 will be summarizing defense exhibits. Again, I have no idea
24 what those are. But to the extent he proposes to summarize
25 voluminous trading records, even assuming their relevance,

1 which I don't concede, it's already too late for us to start
2 digesting all of that, much less whenever he proposes to
3 disclose it.

4 MR. WEINBERG: I never suggested that there was any
5 statement by me that Mr. Frank understood correctly or
6 otherwise that his proposed testimony is limited to
7 Government exhibits. There's no need to summarize Government
8 exhibits. That's for the Government. We have an enormous
9 amount of State Street business records. I haven't yet
10 determined which of those records would be relevant to
11 respond to the Government's case. We are reserving the right
12 to introduce State Street records and then have a summary
13 witness simply say I have reviewed them and these are the
14 records and this is what they say.

15 THE COURT: Okay. Two things. One, if you're not
16 already doing it, I think you both should be giving 48-hour
17 notice of the witnesses you're going to call.

18 MR. FRANK: We've done that, Your Honor.

19 THE COURT: All right. Fine.

20 MR. FRANK: In fact, we've -- given the likely
21 duration of the testimony of cross-examination, it's likely
22 at least 72-hours notice that we've given.

23 THE COURT: Fine. It makes sense.

24 Second, I'm not, at this moment, ordering you,
25 Mr. Weinberg, to make any disclosures about who you're

1 calling, but I remind you that what the scope -- the fairness
2 considerations, timing considerations, they're entitled to be
3 prepared, to respond. You understand that, I know. And so,
4 you know, what -- the scope of what the person testifies to
5 and the amount of controversy to it, assuming it has
6 relevance, which we'll deal with, if there's an objection to
7 relevance, will guide what amount of time you get to respond
8 to it and what to do about it, but you have certain
9 obligations and I know you're aware of them. You keep them
10 in mind.

11 MR. WEINBERG: I understand, Judge. And Mr. Frank
12 will have lead time, because a summary witness can't testify
13 to documents that are not offered as evidence. We will be
14 marking -- to the extent that his testimony is going to be
15 focused on any additional categories of documents, we'll be
16 marking them, providing them, naming them as defense
17 exhibits, giving them as reciprocal discovery, as we have for
18 the last period of time.

19 THE COURT: All right. Anything else for you?

20 MR. FRANK: There's one minor housekeeping matter,
21 Your Honor. The jurors, I noticed, took the transcript
22 binders back with them yesterday. I think probably we should
23 be keeping those on a day-to-day basis, so they don't get
24 marked up.

25 THE COURT: Right, because you're going to have to

1 add to them.

2 MR. FRANK: That's right and also I can't promise
3 that each juror will be getting the same binder. We're not
4 tracking which juror is getting which binder. And also, they
5 probably shouldn't be looking at them back there, either.

6 THE COURT: Right. Hold on.

7 Maria?

8 (Discussion off the record.)

9 THE COURT: I guess it's a good point, and now I'm
10 just thinking about what if they already marked them up, what
11 if someone wrote a note in them.

12 MR. FRANK: We can check them, Your Honor. The
13 Court could also inquire and just admonish the jury not to do
14 that.

15 THE COURT: Right. All right. I think if they've
16 marked them up already --

17 THE DEPUTY CLERK: I wanted to ask you, one of the
18 jurors actually asked me yesterday if they could mark on
19 them. Mark the binders. And I said don't do anything, I
20 said I'll ask. So I was going to ask you that today. And
21 also there's one juror that says one of the binders has two
22 tab 10s, with the same transcript, though. That's just so
23 you know.

24 THE COURT: So I will tell them that there's no
25 significance to having two tab 10s with the same thing. I'll

1 tell them -- I think we should -- you have -- basically, is
2 your plan that along the way, as other transcripts come in,
3 you would add them to that.

4 And so the choice is either to collect them at the
5 end of the day, add them, and recirculate them, or hand out
6 three hole-punched ones and have them put them in, if we were
7 to collect them. Any reason we can't let them mark them up
8 if they want, as long as -- then they have to put their juror
9 numbers on them. We could collect them. They could leave
10 them in the courtroom, so they're not deliberating over them.
11 Do you know what I mean?

12 MR. FRANK: I don't have an objection to that, Your
13 Honor.

14 THE COURT: Oh, but they're not going into the jury
15 room.

16 MR. FRANK: They shouldn't go into the jury room,
17 because they're not evidence.

18 THE COURT: Okay.

19 MR. WEINBERG: I agree with that, Your Honor.

20 THE COURT: All right. So then they shouldn't mark
21 them up, right. And they should leave them in the courtroom,
22 they -- not take them. We'll do it that way. Good point.

23 THE DEPUTY CLERK: Just have them leave them on the
24 seats, I'll collect them.

25 THE COURT: So we'll have them leave them in their

1 seats and we'll collect them and you can add to them, or what
2 have you, at the end of the day. Okay.

3 Anything else?

4 MR. FRANK: Not from the Government, Judge.

5 MR. WEINBERG: Not from the defense, Your Honor.

6 THE COURT: So we'll stand in recess. We'll resume
7 a couple minutes before 9:00 and we'll have Maria check to
8 see if we have all the jurors. When we resume, have
9 Mr. Boomgaardt take the witness stand, so he can already be
10 in the seat. Okay. Thank you.

11 THE DEPUTY CLERK: This matter is in recess.

12 (Court in recess at 8:46 a.m.

13 and reconvened at 8:59 a.m.)

14 THE COURT: Please be seated. Maria. You can go
15 get the jury. By the way, day to day, if you think of a
16 particular exhibit or two or something like that you think I
17 should look at for the first next day because there may be
18 issues about it and it would be helpful if I've read it, you
19 can feel free in the morning or at the end of the day tell me
20 about that at some point and I'll look at it because
21 otherwise, I won't necessarily have read all four binders
22 between today and tomorrow.

23 MR. WEINBERG: Judge, just so you understand, we
24 have received the government exhibits some time ago. But I
25 just received this morning a list of exhibits that we should

1 target or focus on that they're going to be offering through
2 Mr. Boomgaardt, so we may need an extra second or two to just
3 go to the right tab in the notebook --

4 THE COURT: Okay.

5 MR. WEINBERG: -- consistent with the Post-It that
6 we received this morning and make sure it's not an exhibit
7 that we have any evidentiary objections to.

8 THE COURT: Okay. That's fine.

9 (Jury enters the courtroom.)

10 THE COURT: Please be seated. Good morning, ladies
11 and gentlemen. I trust everybody followed my instructions
12 not to discuss the case among yourselves or with anyone else
13 or do any independent research.

14 Good. First of all, thank you very much for
15 working out your commute so you're here so we can begin right
16 on time. A couple of things I wanted to explain to you.
17 First, you might have noticed that one of your number is not
18 here anymore. So I just wanted to explain that to you so you
19 understand. He had a personal matter, it's unrelated to this
20 case, and he brought that to my attention. And based on
21 that, I thought it was the proper thing to do to excuse him
22 from service on the jury, so that's why. It has nothing to
23 do with the case. It's just something that arose in his
24 personal life.

25 So second, with respect to the notebooks, let me

1 give you a little bit more -- not your personal notebooks
2 that you're taking notes in but the notebooks that have some
3 transcripts in them. Those, as I explained to you yesterday,
4 are not evidence. They're what we call a chalk or
5 demonstrative.

6 So sometimes in the course of the trial, you might
7 see like a lawyer make on -- in the old days, a chalkboard
8 and just write. Like in their closing argument they might,
9 say, write a couple of different points along the way on the
10 chalkboard to highlight things in his closing argument. You
11 wouldn't get to take the chalkboard in, just the way you
12 can't take any of his closing argument. So the evidence are
13 the disks, and you'll have them in the jury room because
14 they're in evidence and you'll be able to play them in the
15 jury room and listen to them. But the transcripts are not
16 evidence. The transcripts are just a chalk or a
17 demonstrative, just like someone wrote on the chalkboard to
18 guide you along the way.

19 So for that reason I'm asking you, I'm telling you
20 don't make notes on the transcripts because you're not going
21 to have those notebooks in the jury room with you because
22 they're not evidence. In the jury room, you'll have all of
23 the things that came into evidence. But things that aren't
24 in evidence, like these notebooks, you won't have.

25 So first, don't write in them for that reason. If

1 you want to take a note about something, you can write a note
2 in your notebook. Second, I'm going to ask you to leave them
3 on your seats when you take breaks and leave them on your
4 seats when you're done at the end of the day. And here is
5 why. You'll notice that there are a lot of tabs with nothing
6 between the tabs, okay? That's because the lawyers
7 anticipate that there are going to be other transcripts. So
8 you'll leave them at the end of the day in your seats, and
9 maybe the next day or maybe a couple of days later there
10 might be another transcript slid in, tab 22 might be blank,
11 or there will be another transcript slid in there, and we
12 would do that at night. So that's why we want you to leave
13 them.

14 Also, we don't want you to write notes in them
15 because to the extent you're writing notes about it, you
16 should write them in your own notebook and neither I nor the
17 lawyers should be reading them. That's another reason we
18 don't want them in the notebook of transcripts.

19 Lastly, to the extent that there's a duplicate,
20 like if you have a tab, two tab 10s, for example, I think one
21 of you might have two copies of the same transcript, that's
22 just somebody put it in twice. It has no significance.
23 Don't worry about it. It's just what happens when we put
24 together 15 or 16 notebooks with all of these exhibits. Not
25 a big deal, okay? Obviously, if you see something in it that

1 were different, bring it to our attention, but I don't expect
2 that to happen.

3 All right. Mr. Boomgaardt, I remind you you remain
4 under oath from yesterday. Go ahead, Mr. Johnston and resume
5 your examination.

6 **RICHARD BOOMGARDT**

7 having been previously duly sworn, testified as follows:

8 **DIRECT EXAMINATION BY COUNSEL FOR PLAINTIFF**

9 BY MR. JOHNSTON:

10 **Q.** Good morning, Mr. Boomgaardt.

11 **A.** Good morning.

12 **Q.** Yesterday when we finished you testified that you had
13 been a part of the pitch to KIA to get their bond deal for
14 zero commission; is that correct?

15 **A.** Yes, that's right.

16 **Q.** And you testified that you were uncomfortable about
17 abandoning the transparent approach that State Street had
18 taken up to now; is that correct?

19 **A.** Also correct, yes.

20 **Q.** Then I asked you, did -- did the transition happen right
21 away in March 2010 after the deal was landed?

22 **A.** No. There was some delay before it went ahead.

23 **Q.** Do you recall approximately how many months it was before
24 it actually began?

25 **A.** Two or three months. I mean, it was a fairly significant

1 delay.

2 **Q.** I want to play you a call from June 3, 2010, Exhibit 24,
3 which has been admitted into evidence.

4 THE COURT: Is this in the notebook?

5 MR. JOHNSTON: Yes, it is.

6 THE COURT: Which tab?

7 MR. JOHNSTON: 24, Your Honor.

8 (Voice recording played.)

9 **Q.** Mr. Boomgaardt, you don't have a binder in front of you
10 right now?

11 **A.** I don't, no.

12 MR. JOHNSTON: Your Honor, permission to approach
13 the witness?

14 THE COURT: Yes.

15 Do you have an extra binder?

16 MR. FRANK: Yes.

17 **Q.** Mr. Boomgaardt, we are in tab 24.

18 **A.** Okay.

19 **Q.** Who are you speaking with on this call?

20 **A.** Edward Pennings.

21 **Q.** When Mr. Pennings says, "I just spoke to Ross," who do
22 you understand him to refer to?

23 **A.** Ross McLellan.

24 **Q.** When Mr. Pennings says, "He suggests to get him involved
25 as well in the KIA deal," then Mr. Pennings says, "You know,

1 make it nice," what do you understand Mr. Pennings to be
2 saying to you?

3 **A.** That Ross is going to have an input in this deal. And
4 make it nice means to see how much revenue we can get, how
5 much money we can make from this deal.

6 **Q.** Is that typical to involve -- was that typical at the
7 time to involve the global head of Portfolio Solutions to
8 maximize the amount of revenue in a given deal?

9 **A.** No, no, it wasn't usual.

10 (Voice recording played.)

11 **Q.** Mr. Boomgaardt, what do you understand Mr. Pennings to
12 mean when he says, "He said you can still take one or two on
13 the outgoing side"?

14 **A.** He's referring to a conversation with Ross. I guess,
15 that's my assumption from what he said there, take one or two
16 basis points on the sell side of that transition. The
17 outgoing side being the side we're selling.

18 **Q.** In general in a transition are there two opportunities to
19 take commissions?

20 **A.** Well, you can take a commission on any of the trading,
21 either selling, outgoing, or the incoming managers would be
22 the buy side, so either side, yes.

23 **Q.** So when you're doing a transition, you're selling one set
24 of assets, correct?

25 **A.** Correct, yeah.

1 Q. Then buying another set of assets?

2 A. Yeah, usually, if it's a two-sided transition, which is
3 most of the time, yes, yeah.

4 Q. So on the outgoing side is the sell portion?

5 A. That's correct.

6 Q. And then what do you call the other side?

7 A. The incoming side, the target side, the buy side, all of
8 those things would be the same.

9 Q. So when he says, "You can still take one or two on the
10 outgoing side," does that refer to the sell side?

11 A. That's right. Yeah, he's referring to the sell side.

12 Q. Then "one or two," what does that mean?

13 A. One or two basis points is the way that I take that.

14 Q. When Mr. Pennings says, "No one is going to notice that,"
15 what do you understand him to mean?

16 A. That it's small enough that the client isn't going to
17 notice that we've taken that. They're not going to come and
18 ask us why the prices are -- our support. It's something
19 that's going to get lost in the rounding, as he says.

20 Q. And why would you be hiding this from the client?

21 A. To avoid the uncomfortable questions about how big of a
22 commission was taken on these trades.

23 Q. And in your understanding who is the one who suggested to
24 take one or two on the outgoing side?

25 A. Well, Ed is implying that that is Ross that said that.

1 (Voice recording played.)

2 **Q.** Did the trades for KIA begin shortly after this call?

3 **A.** Yes, yes, I think they did. Certainly later that month
4 anyway, yeah.

5 **Q.** Is there a document that spells out typically how much is
6 going to be charged in a given transition?

7 **A.** Well, there is -- usually there's a periodic notice that
8 goes with a transition that sets out the specifics of any
9 commission agreed with the client, yes.

10 **Q.** And does that document then inform trading instructions?

11 **A.** Well, the trading instructions or the instructions to the
12 traders come from the transition management desk normally.
13 So usually the analyst that's running the transition or the
14 lead analyst sends out the trading instructions to the
15 traders via email normally.

16 **Q.** And typically are you as a transition manager deciding
17 which bonds and stocks to buy or sell, or is that list given
18 to you by the client?

19 **A.** The client normally gives us the list of what they hold
20 and the list of what they'd like to hold. From those two
21 lists we work out what trading is necessary. But we're not
22 really -- we're not making investment decisions so much as
23 figuring out -- if they already hold something that they'd
24 still like to hold, we don't trade that, obviously, but it's
25 working out what net trade needs to get done to get them

1 where they'd like to go.

2 **Q.** So getting from the stage where you know what the client
3 wants but then the traders need to know what to do, how are
4 those instructions given?

5 **A.** Once our team, our project management transition
6 management team has worked out what trade needs to happen,
7 those are loaded up into our trading system, and specific
8 instructions are then given to the traders about how to trade
9 it.

10 You know, there can be quite difficult transitions
11 where there are different things happening in different
12 regions, for instance, we're trading European stocks and
13 bonds and U.S. stocks and bonds and Asian stocks and bonds.
14 We need to make sure that we're trading those in the right
15 quantity so we're not leaving the portfolio sitting in cash
16 for too long or any of those kinds of things.

17 So there will always be a set of instructions that
18 come from our transition manager to the trading team
19 instructing them how much to trade.

20 **Q.** Do you work with State Street's traders around the world
21 on a given transition?

22 **A.** Yes. If there are assets that need to be traded in
23 various different regions, then yeah.

24 **Q.** Typically who trades European stocks and bonds for a
25 transition client?

1 **A.** Typically that would be our desk in London.

2 **Q.** What about U.S. stocks and bonds?

3 **A.** That would be done by the team in Boston normally.

4 **Q.** Even if a client is based in Europe?

5 **A.** That's correct, yeah. The executions would still be done
6 by our Boston trading team.

7 **Q.** And so how would the Boston trading team know which
8 stocks and bonds to buy or sell for a European client that
9 you've engaged with in London?

10 **A.** We had the same trading system, so they could see -- if
11 we loaded up a trade that had assets for them to trade, they
12 would see that, certainly on the equity side. It was a
13 little bit more manual on the bond side. We would send them
14 a file for them to upload themselves, but those instructions
15 about what to trade would be effectively coming from my desk
16 of transition managers.

17 **Q.** A file over email?

18 **A.** Yeah.

19 **Q.** On those emails, would there be any -- would it specify
20 how much commissions would be charged on the bonds?

21 **A.** Normally it would, yeah. Normally it would tell them
22 what commissions to apply on each of the trades.

23 **Q.** And then typically who actually applies the commission to
24 the trade?

25 **A.** Mechanically, it's the traders. They're the ones that

1 book the trades, so that commission needs to get applied in
2 their trading systems.

3 **Q.** And do they do it after they've already bought and sold
4 something in the market or before?

5 **A.** I guess it depends a little bit. They do it after
6 they've traded. But for equities, the commission schedule is
7 uploaded into their system. So it's -- and that's done
8 before the trade. So it kind of books more or less
9 automatically when they're ready to go.

10 Bonds, again, were a little more manual, but again,
11 they would generally upload the commission so that they knew
12 what they were getting on those trades before they started.

13 **Q.** So what you're saying is that commissions were applied
14 automatically for stocks?

15 **A.** Yes.

16 **Q.** But they were applied more manually for bonds?

17 **A.** That's generally true. Bonds were generally a more
18 manual -- more manual trading in general, including the
19 booking side.

20 **Q.** And it was the traders who would apply the commissions to
21 the bond trades?

22 **A.** That's right. They're the only ones that could. My team
23 didn't have access to the trading system to be able to do
24 that.

25 **Q.** Now I'm going to play you another call, this one from

1 June 15, 2010.

2 THE COURT: Which tab?

3 MR. JOHNSTON: This is tab 3.

4 (Voice recording played.)

5 Q. Mr. Boomgaardt, who are you speaking with on this call?

6 A. I'm speaking with two of our bond traders in Boston,
7 Steve Finocchi and Greg Spyropoulos.

8 Q. So they work on the Boston trading desk?

9 A. That's right.

10 Q. Where are you at the time this call is being made?

11 A. In London.

12 Q. Why were you calling Mr. Spyropoulos and Mr. Finocchi?

13 A. To give them trading instructions to make sure they
14 understand how we need them to trade KIA, and AHV, as well is
15 another trade we had at the same time.

16 Q. I thought you said you typically send out instructions
17 via email?

18 A. We do, and if they are complicated, we would follow them
19 up with a phone call. It's not unusual to speak with them,
20 particularly if it's something that's the size of this,
21 following up with a phone call was not an uncommon thing.

22 Q. What's so unusual about the size of this deal?

23 A. It's big. It's a \$2 billion sell of bonds and a \$2
24 billion buy of bonds. That's a very, very big transition.

25 Q. What types of bonds are being sold here?

1 **A.** The sell side are T bills, so very short-dated U.S.
2 government bonds with a very short maturity, usually
3 somewhere between kind of 30 and 90 days.

4 **Q.** Where are T bills typically traded?

5 **A.** They're U.S. securities, so they're generally traded in
6 the U.S.

7 **Q.** So you need the folks in Boston to do this for you?

8 **A.** Yeah, yes.

9 **Q.** Could your traders in London do this?

10 **A.** I don't think so. I don't remember a time when they did.

11 **Q.** You mentioned about halfway down the first page, "I tried
12 to grab Ross. He is just interviewing a guy." Who are you
13 referring to there?

14 **A.** Ross McLellan.

15 **Q.** Was he there with you in London?

16 **A.** He was there in London at the time, yeah.

17 **Q.** Why are you mentioning Ross to Mr. Spyropoulos and
18 Mr. Finocchi?

19 **A.** Because Ross wanted to be involved in the conversation,
20 wanted to be involved in the trade. Also, you know, those
21 guys are used to seeing Ross on a daily basis, so, you know,
22 knowing that these instructions effectively are coming from
23 Ross, I guess, to make them comfortable with what I'm telling
24 them.

25 **Q.** You say that that they see Ross on a daily basis. Is

1 that because --

2 **A.** They're based in Boston. They're in the same geographic
3 location.

4 **Q.** Have you been to State Street -- or had you been to State
5 Street's Boston office at this point?

6 **A.** Yeah.

7 **Q.** Where did Mr. Finocchi and Spyropoulos sit compared to
8 where Mr. McLellan sat?

9 **A.** Oh, it's an open -- it's a big open trading floor in
10 Boston, and Ross's office was kind of around the edge of
11 that, I guess.

12 MR. JOHNSTON: All right. Could we continue.

13 (Voice recording played.)

14 **Q.** Mr. Boomgaardt, directing your attention to page 2 of the
15 transcript to line 6 and 7, when you say to the traders,
16 "Before you book out the client side, send the executions
17 across, and we will have a look and figure out what levels we
18 want to put on the client side," what are you referring to
19 there?

20 **A.** That's saying once you've done your executions in the
21 market, send those over, and we'll tell you what commissions
22 to apply so that -- we'll tell you the prices that we want
23 you to book out to the client. The difference between what
24 we book out to the client and where you've executed in the
25 market is effectively our commission, the money that State

1 Street makes off of those trades.

2 **Q.** Now, you testified that before this you would also know
3 in advance the commission that you would apply; is that
4 correct?

5 **A.** Yes, yeah.

6 **Q.** Is it your testimony that here you're not even sure what
7 commission you're going to apply?

8 **A.** That's correct, yeah.

9 **Q.** And so why do you want to see the prices that traders
10 have been able to execute first?

11 **A.** So that we can see if -- well, I guess for a couple of
12 reasons. One, to see how well they've executed relative to
13 where trading was that day so that we can apply a commission
14 and to make sure that that commission is as big as it can be
15 while still being -- looking reasonable so that the least
16 likely that the client or anybody else is going to notice
17 that there was a commission taken on those, so consistent
18 with what the trading range of the day is for those
19 securities.

20 **Q.** So are you saying that a particular bond will trade
21 within a price range?

22 **A.** Yeah. It's over a day of bonds, just like stocks, the
23 prices will move around a little bit for lots of different
24 reasons. And what we're saying there is send us over what
25 you've executed and we'll have a look to see where it traded

1 to make sure that our commission that we're going to put on
2 it is both, you know, as big as it can be but also not so big
3 that it's going to be taking us wildly outside of that range
4 so a client who had access to that information about trading
5 ranges for that the day would go, "Well, hang on a second.
6 My executions look a long way away from what the market was
7 trading that day."

8 **Q.** You also say on line 8 and 9, "We're basically doing them
9 at zero, and they told us to take a markup or markdown to
10 sort of remunerate ourselves." What do you mean by that?

11 **A.** Well, it was a zero commission -- it's a zero commission
12 deal. So I guess going back to where we were with KIA, they
13 instructed us and we pitched and agreed to do it for zero
14 commission.

15 As I said, Ed did tell Das that we were going to be
16 taking a spread on these. And my understanding of the
17 conversation that he had with Das was that Das okay with
18 that, so take a spread, just don't show it as a commission.

19 **Q.** You just didn't know what other representations Ed may
20 have made?

21 **A.** Exactly. I mean, he made me aware that he had that
22 conversation. As I said, I did hear a part of that
23 conversation when I walked into his office.

24 **Q.** At this point had you ever decided in the middle of a
25 trade how much to apply?

1 **A.** No, no.

2 **Q.** And then further down you say, "We can charge a couple of
3 basis points on price for the T bills. That is probably
4 about all that is legitimate on that, I think." What are you
5 referring to there?

6 **A.** T bills are generally liquid and very easy to trade. So
7 what I'm saying is, if we charge a couple of basis points,
8 you know, that's -- yeah, kind of inside market convention I
9 guess but on the more generous side for State Street. So
10 it's a fairly large commission but it's not outrageous.

11 **Q.** Is that referring to the buy -- sorry -- to the sell
12 side?

13 **A.** That's the sell side, yeah.

14 **Q.** So what types of bonds are being purchased?

15 **A.** Much longer dated government securities. So again,
16 government bonds that don't mature for a number of years.

17 **Q.** Just so we understand you correctly, on the sell side,
18 you're telling the traders a couple of basis points?

19 **A.** Yes.

20 **Q.** But on the buy side you're telling them, "Don't actually
21 apply a commission yet. Send us over the street prices and
22 we'll make up the that number later"?

23 **A.** That's correct.

24 **Q.** And why do you use the term on line 17, "That is probably
25 all that is legitimate"?

1 **A.** Meaning these things are liquid, so it needs to be a
2 relatively small commission, again, to not be too, too
3 egregious. I do think that's about as big as that commission
4 could be without it seeming very, very big.

5 I mean, this is I guess part of the reason I felt
6 uncomfortable with all of this is making up your own
7 commission rate is not easy. You've got an inherent conflict
8 between making as much money for the bank as you can and
9 still treating the customer somehow fairly.

10 **Q.** Had you ever just made up your own commission number
11 before that?

12 **A.** No.

13 (Voice recording played.)

14 **Q.** Mr. Boomgaardt, at the end of this or at the point where
15 we've stopped, what's your understanding of what the traders
16 have agreed to do for you?

17 **A.** That they're going to sell the U.S. Treasury bills
18 essentially with 2 cents commission baked into the client
19 side execution, so a 2 cent commission on each of those for
20 State Street, and they're going to execute the buys in the
21 market, and they're going to send me a file of those buys so
22 I can then let them know what prices they should book out on
23 the client side.

24 **Q.** And now I want to play you a call from slightly later
25 that day. This is Government Exhibit 32, if you want to turn

1 to the tab behind 32.

2 (Voice recording played.)

3 **Q.** Mr. Boomgaardt, are you on this phone call?

4 **A.** I am, yeah. I'm listening. So on the trading desk,
5 multiple people can pick up the same line. So that is Ross
6 and me from around my desk on our trading desk talking to
7 Steve Finocchi in Boston.

8 **Q.** So at the time this call is taking place, where is
9 Mr. McLellan?

10 **A.** Sitting next to me.

11 **Q.** And you haven't spoken on this call yet, have you?

12 **A.** No.

13 **Q.** What's your understanding of what Mr. McLellan is asking
14 from Mr. Finocchi?

15 **A.** He is asking him for the data around what the range of
16 the trading was for the executions that we've done on the buy
17 side for KIA. So for everything we bought, he's asked for
18 the trading range, but specifically, what's the highest price
19 it's traded at today.

20 **Q.** Why do you need this information from Mr. Finocchi?

21 **A.** Well, as I said, for two things, to make sure that when
22 we add a commission we're not taking it wildly outside of
23 what those highs of the day were but also that we're not
24 leaving money on the table, I guess, that if there's a -- if
25 our guys have done a spectacularly good execution near the

1 low of the day, maybe there's scope to take a bigger
2 commission. So it's both of those things, I guess, trying to
3 make as much as money for State Street but at the same time
4 not taking it outside of that range of the day so that
5 clients will start asking a lot of difficult questions, I
6 guess.

7 **Q.** In your typical transition if your traders do an
8 excellent job, great prices in the market place, who gets the
9 benefit of that performance?

10 **A.** The client does.

11 **Q.** If you are marking up the trade to the high of the day,
12 who is getting, in that situation, the benefit of the
13 performance?

14 **A.** State Street is.

15 **Q.** Mr. McLellan mentions Bloomberg. What is Bloomberg?

16 **A.** Bloomberg, it's a multifaceted tool that's used a lot on
17 trading floors. It has -- in this specific instance it has
18 data for almost every stock and bond you can think of. It
19 has price data, but it also has details about what it is, and
20 it also has a news feed. And in fact, our bond trading
21 system was actually integrated into Bloomberg.

22 **Q.** What's your understanding of why you need Tradeweb if you
23 have Bloomberg in London?

24 **A.** Tradeweb is a treasury kind of trading system in the
25 U.S., So it may have better data than what Bloomberg has in

1 it. We will have looked at both of them. Certainly we
2 looked at Bloomberg data, but Tradeweb data wasn't something
3 that we had access to in London.

4 **Q.** Why do you need information from both sources?

5 **A.** Again, so we can see the best data that's available for
6 those ranges of the day.

7 **Q.** When Mr. McLellan says, "Basically, I want the high," do
8 you have an understanding of what he meant there?

9 **A.** Well, what were the high prices? How do we -- how can we
10 make sure -- we're going to be marking the prices up. So we
11 want to make sure we're not marking them up past those highs
12 of the day or to such a degree that it's going to be obvious,
13 but at the same time, marking them up high enough that we're
14 maximizing the revenue that State Street can get.

15 **Q.** And what about his laughter; was there a joke going on
16 between you and Mr. McLellan at the time?

17 **A.** No.

18 **Q.** Do you have an understanding of what was funny?

19 **A.** Well, I mean, we're marking these trades up, so we don't
20 really care what the low of the day was. We're looking at
21 the high of the day. It's the only -- we talk about range,
22 but it's really only one side that we care about.

23 (Voice recording played.)

24 **Q.** Mr. Boomgaardt, what is your understanding as to what
25 Mr. Finocchi has agreed to do for you and Mr. McLellan at the

1 end of this call?

2 **A.** To give that Tradeweb data to us, showing the highest
3 traded price on Tradeweb. So according to Tradeweb, what was
4 the highest price of the day for all of those securities that
5 we had purchased on behalf of KIA that day.

6 **Q.** Did you receive that data from Mr. Finocchi?

7 **A.** Yes.

8 **Q.** Did you -- what did you do after receiving that data?

9 **A.** Ross and I looked at the Tradeweb prices, we looked at
10 the Bloomberg prices and decided on what commission we should
11 put on those trades for State Street and what prices we
12 should instruct Steve and Greg to book out to the client.

13 **Q.** So it's still the traders at the end of the day who had
14 to actually enter in the record into the trading system?

15 **A.** Yes, correct.

16 **Q.** So you and Ross were deciding the commission, but they
17 still had to manually enter it?

18 **A.** That's right.

19 MR. JOHNSTON: If we could take a look, we're going
20 to be looking at an exhibit that's not yet in evidence, if it
21 can just be shown on the witness screen and counsel.

22 Exhibit 35, please. Zoom in at the top, Erin.

23 **Q.** Do you recognize this email, Mr. Boomgaardt?

24 **A.** Yes, I do.

25 **Q.** Who sent it?

1 **A.** I did.

2 **Q.** Who did you send it to?

3 **A.** It's to Steve Finocchi, Greg Spyropoulos, and I guess a
4 couple of other traders, Ross McLellan and Adnan, who was the
5 analyst that I had working on it, as well as Todd Clemmenson,
6 who is another Boston-based trader, and Tom Bryant as well
7 who is the head of the trading desk or was the head of the
8 trading desk in Boston.

9 **Q.** Was this sent on the same day as of this phone call we
10 just listened to, on June 15, 2010?

11 **A.** Yes, it was.

12 MR. JOHNSTON: Your Honor, at this time the
13 government moves to admit Exhibit 35 and 35-1, which is the
14 attachment to the email.

15 MR. WEINBERG: No objection.

16 THE COURT: Admitted.

17 MR. JOHNSTON: Permission to publish to the jury?

18 THE COURT: Yes.

19 (Exhibit Nos. 35 and 35-1 admitted into evidence.)

20 MR. JOHNSTON: You can zoom in on the top again
21 there.

22 **Q.** Mr. Boomgaardt, I want to direct your attention to the
23 attachment here. What is it that's attached to this email?

24 **A.** That attachment is showing the client side prices that
25 we're instructing the traders to book out.

1 Q. And what do you write to Mr. Finocchi?

2 A. "Steve, thanks for the help today. Here are the client
3 side prices. Let me know if you have any questions."

4 Q. What was your understanding of what Mr. Finocchi is
5 supposed to do with the information in this attachment?

6 A. Book out the prices that we show him on that Excel sheet.

7 Q. Is Mr. McLellan one of the recipients on this email as
8 well?

9 A. Yes, he is.

10 Q. Let's take a look at the attachment, 35.1.

11 MR. JOHNSTON: If you can zoom in, please, Erin, at
12 the top.

13 Q. Could you help us understand what we're looking at here,
14 Mr. Boomgaardt?

15 A. Sure. That is a file showing the bonds that we traded
16 that day. The CUSIP and the ISIN are unique identifiers for
17 each of those securities. The description T stands for
18 Treasury. So those are the U.S. Treasurys, and then you've
19 got two Canadian ones at the bottom there. The date in the
20 description is the maturity date.

21 Q. So the column that says "Price," what does that refer to?

22 A. That's the price that the guys have traded at in the
23 market. So the actual execution price that our guys have
24 already done in the market, so what we call the market side
25 or the street side of the trades.

1 **Q.** And what's the column on the right?

2 **A.** That is the client side, so the one in bold there is
3 reflecting the prices that we are asking the traders to book
4 out to the client. So the difference between that client
5 side bold price and just the price column is indicative of
6 the commission that State Street will be keeping.

7 **Q.** And then the top, directing your attention just to the
8 top row, which -- the row that says "Security" at the very
9 top, what's the particular bond that's listed there?

10 **A.** That is a U.S. Treasury bond that pays a 2.125 percent
11 coupon that expires at the end of May 2015.

12 **Q.** How large is it?

13 **A.** Well, we have traded 50 million of that.

14 **Q.** And what's the approximate commission that was applied to
15 this particular bond?

16 **A.** Well, on price it's about .2, so that price of around 100
17 means that the actual value of that will be about 50 million.
18 So those prices are done as a percentage, if you'd like.

19 **Q.** So on a \$50 million bond with a 20-cent markup, what's
20 the commission and revenue to State Street from just the
21 single bond trade?

22 **A.** That's about \$100,000.

23 **Q.** Is that typical compensation for a bond trade for one of
24 your transition clients?

25 **A.** No. That's very high.

1 Q. How much higher?

2 A. Typical, for something of that ilk, would be more in two
3 or three basis points maybe rather than 20.

4 Q. So you're talking between seven to ten times higher?

5 A. That's about right.

6 Q. And typically, when your traders are executing in the
7 market, are they trying to get the best price for the client?

8 A. Yes.

9 Q. And why is that?

10 A. Well, because that's an agency way of trading. We're out
11 in the market trying to find them the best price. That's our
12 duty.

13 Q. So when you say you're an agent, that means you're trying
14 to find the best price, get the best price?

15 A. That's right, yeah.

16 Q. And if you do better than you expect, who generally gets
17 that benefit?

18 A. The client generally gets that benefit.

19 Q. Who got the benefit here?

20 A. State Street got the benefit here.

21 Q. Now, do you know whether you ended up booking out the
22 client side prices to the exact levels of the Tradeweb data
23 or whether you used Bloomberg?

24 A. I don't recall exactly. We looked at both, but I don't
25 remember seeing the data on what the Bloomberg prices were.

1 Q. So you're not sure at the end of the day which one you
2 ended up relying on?

3 A. I don't recall.

4 Q. Based on what you recall of working with Mr. McLellan
5 that day, which one do you -- do you have an understanding of
6 which one you would have chosen?

7 A. We would have looked at both and chosen the one that was
8 most advantageous to us.

9 Q. So that made you the most money?

10 A. Yeah. That could have been Bloomberg, or it could have
11 been Tradeweb; I don't recall.

12 Q. Was pricing the bonds like this to KIA, was that
13 consistent with how you had presented yourself to your
14 clients?

15 A. No, no, it wasn't.

16 Q. Did you feel comfortable doing this, sitting next to
17 Mr. McLellan, marking up the trades?

18 A. No, no. It made me feel uncomfortable because it's not
19 something I had ever done before. I had been in the industry
20 for more than ten years at that point, and I had never had to
21 do that before.

22 Q. Why did you do it?

23 A. Well, I was being -- I was being asked to do it by a
24 couple of very senior individuals.

25 Q. How much more senior to you was Mr. McLellan at the time?

1 **A.** Well, I guess he was two rungs senior to me, I guess.
2 Yeah. So I was -- at that point I believe I was a managing
3 director. If not, he would have been three rungs higher than
4 me. I got promoted whilst I was there from vice president to
5 managing director and then above that was senior managing
6 director, which is what Ed Pennings was, and then above that
7 was executive vice president, which is what Ross's title was.

8 **Q.** So executive vice president is above senior managing
9 director?

10 **A.** It is, yeah.

11 **Q.** And that's above managing director?

12 **A.** Yeah.

13 **Q.** That's what you were at the time?

14 **A.** I believe I was a managing director. I can't remember if
15 this one was before or after my promotion. If it was before,
16 then I would have been a vice president, which would have
17 been another rung below managing director. When I started at
18 State Street I came in as a VP.

19 **Q.** Now, we just looked at some of the commissions on this
20 one set of bond trades. Were there additional trades that
21 were done as part of this transition?

22 **A.** Well, there was the sell side, I guess, that were done
23 there as well. I don't know if there were others done or
24 not.

25 **Q.** Do you know approximately how much in commissions State

1 Street made from the KIA transition in June?

2 **A.** I don't know the -- I don't know the exact number. I
3 know it was in the millions, but I don't know exactly what
4 that number was.

5 **Q.** Was that higher or lower than your normal commissions?

6 **A.** That's a high commission transition, yeah. That is an
7 elephant deal in every sense.

8 **Q.** Did this plan to charge higher commissions than you had
9 actually disclosed to the clients continue after KIA?

10 **A.** It did, yeah.

11 **Q.** Do you recall a client by the name of Dutch Doctors?

12 **A.** I do, yeah.

13 **Q.** Who are they?

14 **A.** They are a pension fund in Holland that's set up for
15 doctors. So it's a pension fund to look after and providing
16 income in retirement for doctors in the Netherlands.

17 **Q.** Did you perform a transition for them in the summer of
18 2010?

19 **A.** Yes.

20 **Q.** What kind of assets were they looking to buy and sell?

21 **A.** Bonds.

22 **Q.** Do you know whether they negotiated with you on the basis
23 of price?

24 **A.** I believe they did. I mean, it was Ed's client. I
25 wasn't so much involved in the negotiation on Dutch Doctors.

1 **Q.** Do you know whether you only charged what had been agreed
2 upon with the client?

3 **A.** No. We charged more than what was agreed upon with the
4 client.

5 **Q.** What did you end up doing?

6 **A.** We -- the agreement was a one basis point charge, and we
7 charged 1.5 basis points, so effectively 50 percent more
8 commission than what had been agreed.

9 **Q.** I want to play you a call from June of 2010 that's been
10 admitted into evidence, Government Exhibit 43. If you could
11 turn to that tab.

12 (Voice recording played.)

13 **Q.** Mr. Boomgaardt, who are you speaking with on this call?

14 **A.** Ed Pennings.

15 **Q.** And who are all the names that are being mentioned at the
16 beginning of the call?

17 **A.** They're all people who are involved with the client Dutch
18 Doctors in one way or another.

19 **Q.** And why are you talking about sending them something?

20 **A.** Before any transition, we send them a pre-trade analysis,
21 so a quantitative analysis that shows where the risks of the
22 portfolio are. It also informs what our trading strategy is
23 in terms of how we'll trade the bonds. It also gives them an
24 estimate, our estimate of what the total cost of that
25 transition is going to be. We also put together a project

1 plan that sets out who the parties are that we're engaged
2 with and a timeline of what needs to happen.

3 **Q.** And in this particular call why are you discussing
4 sending a new pre-trade out?

5 **A.** They changed the transition. I believe they made -- they
6 put more assets into the transition, so it ended up being a
7 little bit bigger than what we had initially -- the analysis
8 that we had done for them initially.

9 **Q.** So you had to update that?

10 **A.** Yeah, yeah. A bigger trade generally means you're going
11 to incur a little bit more, certainly market impact and
12 trading costs.

13 **Q.** And I know it's implied in the name "pre-trade," but is
14 this sent before trading starts?

15 **A.** It is, yeah.

16 **Q.** You testified that it includes an estimate of total
17 costs; is that correct?

18 **A.** Yes.

19 **Q.** So the indirect costs that you previously testified
20 about?

21 **A.** Everything. It's an implementation shortfall. It's the
22 overall cost, yeah.

23 **Q.** So that would have estimates of opportunity cost?

24 **A.** Yeah.

25 **Q.** Bid-ask, spread?

1 **A.** Yeah.

2 **Q.** Then does it also include the direct costs?

3 **A.** It does. There are fewer direct costs in terms of taxes
4 and fees and things in the bond market. There aren't very
5 many, so those aren't broken out separately. But any
6 commission that we've put in would be included in that cost
7 calculation but inside the bid-ask spread.

8 **Q.** So the costs, the commission that State Street would be
9 earning would be included in the implementation shortfall
10 that's being provided?

11 **A.** Yes, yeah.

12 (Voice recording played.)

13 **Q.** Mr. Boomgaardt, directing your attention to line 10 on
14 page 2, why do you refer to the numbers 51 versus 47.7?

15 **A.** Those are the cost estimates. So they've increased the
16 size of it. What I'm saying there is the estimated cost is
17 now 51 basis points. The first one we sent to them was 47.7.

18 **Q.** And that's sort of the total --

19 **A.** Total cost estimate, yeah.

20 **Q.** -- direct, indirect, all rolled into one?

21 **A.** Yeah.

22 **Q.** What do you understand Mr. Pennings to be asking of you
23 when he says, "Well, if they ask you, say you built in 1 BP,"
24 right?

25 **A.** He is saying if they ask, tell them that I built one

1 basis point of commission into that pre-trade.

2 **Q.** Okay. Then you say, "Okay. I actually had to scale it
3 down slightly in our columns to get it down." What do you
4 mean by that?

5 **A.** That in order to make the difference between that 51 and
6 47.7 not look quite so big, I actually did -- it's implying
7 that I had actually built in a bigger commission, a basis
8 point and a half or something, in the first one, but I had to
9 scale it down to one basis point, about, anyway, in that
10 pre-trade.

11 **Q.** Okay. So what you sent over to the client or what you're
12 about to send over to the client includes something at one
13 basis point?

14 **A.** That's -- I would have to look at the analysis, but
15 that's what I'm saying there.

16 **Q.** Then Mr. Pennings says, "But make no mistake, we will
17 take one and a half." What do you understand him to mean?

18 **A.** That we're going to be charging a basis and a half of
19 commission, despite whatever is in the pre-trade analysis.

20 **Q.** So before trading starts and despite telling the client
21 one basis point, you're going to take one and a half?

22 **A.** That's correct.

23 **Q.** And then when he says, "All right. They don't need to
24 know that," what do you understand him to be saying?

25 **A.** Don't tell that to the client.

1 Q. So if they come asking --

2 A. Yeah, don't tell them.

3 Q. Did this transition just include bonds?

4 A. I think it did. I think it was just a bond transition.

5 Q. And what made it possible to do this, to charge one and a
6 half rather than one where the client would have to ask you
7 to even know?

8 A. Again, commissions weren't and our fixed income reporting
9 weren't as a matter of course broken out separately. We had
10 to do that manually. It was a bit of a system thing. But
11 also in terms of what gets reported to the client and their
12 custodian, the actual transactions that go across only show
13 the client side. So they only show the net price. It
14 doesn't show a commission column. It doesn't say how much
15 money has been taken between where we executed in the market
16 versus what's booked out to the client. The client only sees
17 their execution; that's it.

18 Q. So they're hidden because of the way the reporting
19 convention --

20 A. Correct, they can't see them.

21 Q. You said that, you testified with KIA that there is some
22 data points available to clients based on sort of just market
23 trading data; is that correct?

24 A. Yes, yeah, there is.

25 Q. So that's sort of the outer limit of the secret

1 commissions you could take?

2 **A.** It is, yeah. Most -- but again, it would be generally
3 not possible for most bonds for a client to pick out which
4 was their execution out of anything they see off of
5 Bloomberg, certainly.

6 **Q.** But if their execution was higher than the highest of the
7 day, would that be noticeable?

8 **A.** It would be, and certainly something they would be likely
9 to ask a question about.

10 **Q.** Do you know whether State Street ended up charging one
11 and a half basis points on this transition?

12 **A.** Yes. We did charge one and a half basis points on it.

13 **Q.** Do you know how much in commission that equalled out to?

14 **A.** I don't know the exact numbers for Dutch Doctors either,
15 but again, it was a million-ish, something like that, I
16 think.

17 **Q.** In extra revenue or total revenue?

18 **A.** Sorry. In extra revenue, yeah. I think the total
19 revenue was 2 to 3 million, something in that range,
20 certainly in the millions anyway.

21 **Q.** So an extra 50 percent was from that added commission?

22 **A.** That's right, yeah.

23 **Q.** Did you send a post-trade to the client?

24 **A.** Yes, we did.

25 **Q.** Did that have the commission number separately broken

1 out?

2 **A.** No, it didn't.

3 **Q.** Why didn't it have the commission numbers broken out?

4 **A.** It wasn't our normal way to report fixed income. It was,
5 again, in order to get those numbers -- in equities, it was
6 easy because it came straight out of our trading system, and
7 the commission after was easy. Fixed income was a lot more
8 manual, so it was our standard report that just didn't break
9 out commission. It had to be done in a manual way. And it
10 wasn't for this one.

11 **Q.** How would the client know if State Street hadn't lived up
12 to their end of the bargain?

13 **A.** In terms of how much commission we took? They wouldn't
14 know from any of the reporting that we sent them.

15 **Q.** What if they asked you?

16 **A.** If they asked us, we could show them the street side
17 executions or we could quantify exactly what those were,
18 yeah.

19 **Q.** And what did Ed Pennings instruct you to do if Dutch
20 Doctors did in fact ask?

21 **A.** Well, he told me not to tell them.

22 **Q.** Did they come asking about that at this time period in
23 the summer of 2010?

24 **A.** They certainly didn't come asking me about it. I don't
25 know what conversations anybody else had with them. I wasn't

1 their main contact. But I certainly didn't take any queries
2 from them on that I don't believe.

3 **Q.** So you didn't have to lie to them --

4 **A.** Correct.

5 **Q.** -- at this point? Did you have an understanding whether
6 anyone above Ed approved taking this extra commission from
7 Dutch Doctors?

8 **A.** Yeah.

9 MR. WEINBERG: I object, unless there's an
10 evidentiary basis for his understanding, Your Honor.

11 THE COURT: Sustained.

12 **Q.** Did you have regular discussions with Ed Pennings about
13 charging secret commissions?

14 **A.** "Regular" as in for all of the deals where we did it,
15 certainly, yeah.

16 **Q.** Including for Dutch Doctors?

17 **A.** Yes, I believe so.

18 **Q.** Did you have any discussions where Mr. Pennings conveyed
19 to you whether Mr. McLellan knew about charging undisclosed
20 commissions on Dutch Doctors?

21 **A.** He certainly led me to believe that Ross did know about
22 this and all of the other ones. But I don't -- I don't
23 recall having a conversation directly with Ross on this
24 particular transition.

25 MR. WEINBERG: I object to, "led him to believe,"

1 Your Honor, as being an improper evidentiary basis.

2 THE COURT: You can clarify it before I rule on it.

3 Q. How often would you speak with Ed Pennings around deals
4 like this where you were not being transparent with your
5 client?

6 MR. WEINBERG: I object to the editorialization of
7 what he's doing or not doing.

8 MR. JOHNSTON: I am restating the witness's
9 testimony. He already testified that charging secret
10 transitions was not being transparent with the client, so it
11 was just to direct the witness's attention to --

12 THE COURT: Restate the question.

13 MR. JOHNSTON: Sure.

14 Q. How often did you speak with Ed Pennings about the
15 transitions where you would not be transparent with the
16 clients?

17 THE COURT: You can answer that.

18 A. Frequently. I mean, I spoke to Ed frequently anyway
19 about everything, but certainly on a very regular basis
20 around these transitions.

21 Q. And in each of them, particularly with Dutch Doctors, do
22 you recall conversations where Ed made statements about Ross
23 approving of the extra?

24 THE COURT: Well, what did he say?

25 Q. What did he say, if you can recall about --

1 **A.** I mean, I don't recall the exact conversations that I had
2 with Ed. I do remember my own perceptions from those
3 conversations with Ed that Ross did know about these.

4 MR. WEINBERG: I object, Your Honor. There's again
5 no foundation for his perceptions and no memory of any
6 specific conversation with Mr. Pennings regarding
7 Mr. McLellan and Dutch Doctors.

8 MR. JOHNSTON: Your Honor, these witnesses are
9 testifying about things from seven years ago. Most people
10 can't remember a specific conversation seven years ago unless
11 we have a recording in front of them.

12 MR. WEINBERG: I object to the speech about memory.

13 THE COURT: Sustained as to the speech.

14 Ladies and gentlemen, what people remember is for
15 you to decide. Whether they remember things from today,
16 seven years ago is for you to decide. The question is what
17 is the basis for him to say -- you can ask him what led him
18 to believe this, but there has to be some foundation for it
19 as opposed to just in the ether he thought it was okay.

20 **Q.** What if anything about your conversations with Ed led you
21 to believe that Ross approved of this?

22 **A.** Again, I can't recall the exact specific conversation
23 that I had with Mr. Pennings but --

24 MR. WEINBERG: Therefore I object, Your Honor.

25 THE COURT: Let him finish the answer.

1 **A.** But I remember clearly for this transition and all of
2 them having the perception given to me from Ed, because I
3 don't recall talking to Ross about this specific one, but
4 that Ross knew.

5 MR. WEINBERG: I object and move to strike.

6 MR. JOHNSTON: Can I ask a few more clarifying
7 questions?

8 THE COURT: Yes.

9 MR. WEINBERG: I'd ask the prosecutor not to lead
10 the witness in this area.

11 THE COURT: Yes. Who, what, when, where, why and
12 how.

13 **Q.** Of all the transitions that you worked on, how many of
14 them involved the types of commissions that we've talked
15 about?

16 THE COURT: During what time period?

17 **Q.** 2010, 2011?

18 **A.** There were half a dozen or so.

19 **Q.** And what did that --

20 THE COURT: Half a dozen had these types of
21 commissions?

22 THE WITNESS: That's correct, yeah.

23 **Q.** And in that time period, 2010 and 2011, how many
24 transitions in total did you work on?

25 **A.** Just in Europe we were doing about 100 a year.

1 **Q.** Were you comfortable with the transitions that you --
2 with the transitions that involved these types of
3 commissions?

4 **A.** No.

5 **Q.** Did that discomfort lead to any -- do you have any
6 recollections, do those memories stand out a little greater
7 to you than just the normal work that you did?

8 MR. WEINBERG: I object.

9 THE COURT: Sustained as to the form.

10 **Q.** Do you remember conversations about the transitions that
11 involved these types of commissions?

12 **A.** I remember them more than the standard ones, yes, because
13 these were unusual. They were -- they took us into a
14 different way of charging clients, yeah. Yeah, I do remember
15 them well. They were big transitions as well, so those do
16 tend to stick out more as well.

17 **Q.** And what's the only reason why you went along?

18 **A.** Because I was given assurances and asked to do it by
19 senior people that I trusted.

20 **Q.** So then when you did this, when you agreed to lie to the
21 client in that call with Dutch Doctors, who did you believe
22 understood or approved of this?

23 MR. WEINBERG: I object. There's either
24 conversations which are a proper predicate that this witness
25 remembers or no memory --

1 THE COURT: Sustained as to the conclusion.

2 Q. Did you have conversations with Ed Pennings about Ross's
3 involvement in each and every one of these deals?

4 MR. WEINBERG: I object, unless it's focussed on
5 one or another rather than all.

6 THE COURT: Overruled. You can ask him first if he
7 had general conversations about these deals, yes.

8 Q. Did you have conversations with Ed Pennings about the
9 deals involving secret commissions?

10 A. Yes, yes, I did.

11 Q. With each and every one of them?

12 A. Yeah. Again, I can't remember the specific
13 conversations, but each and every one of them I certainly had
14 conversations with Ed and Ed told me that this was approved
15 certainly by Ross.

16 Q. Did the plan to charge hidden commissions continue?

17 A. Yes, it did.

18 Q. Was there any type of deal that was appropriate or that
19 was deemed appropriate to charge hidden spreads on?

20 A. Large fixed-income-related transitions.

21 Q. And why were large fixed-income transitions the ones to
22 do?

23 A. Fixed income because the reporting could be more opaque.
24 The client couldn't see those commissions in our reporting,
25 so that was fairly easy to keep them from -- pardon me --

1 from the client seeing. And large, because they were the
2 ones that could generate the most revenue.

3 **Q.** But why not do it on every bond transition that you did,
4 whether large or small?

5 **A.** It was a deviation from the way we sold ourselves in the
6 market. The more we did, the more likely that that deviation
7 from our normal plan or normal way of doing business would --
8 the risk of that getting out was greater. So, you know,
9 focus it on the ones where the impact is the greatest and try
10 and keep it quiet.

11 **Q.** In this time period of 2010, did you speak about it
12 openly in the London transition team?

13 **A.** No.

14 **Q.** With whom did you discuss it in London?

15 **A.** Only the management team really in London.

16 **Q.** Did there come another opportunity in 2010 to charge
17 hidden commissions on a KIA transition?

18 **A.** Yes.

19 **Q.** And when did that opportunity arise?

20 **A.** It was later in 2010. I forget exactly the month.

21 **Q.** And what type of transition was it?

22 **A.** It was another bond transition.

23 **Q.** Who told you about this opportunity?

24 **A.** Ed. Ed was the salesperson that covered KIA, so those
25 queries always came in via him.

1 Q. Do you know if a commission rate was promised to the
2 client?

3 A. A commission of zero was promised to the client.

4 Q. Is that what you ended up charging?

5 A. No.

6 MR. JOHNSTON: All right. I want to show an
7 exhibit just to the witness, please.

8 THE COURT: All right.

9 MR. JOHNSTON: Government Exhibit 59. If we can
10 zoom in on the text, please.

11 Q. Do you recognize this document, Mr. Boomgaardt?

12 A. Yes, I do.

13 Q. What is it?

14 A. It is an email from Adnan Choudhary, who is one of the
15 analysts that worked for me on my team, to various fixed
16 income bond traders, copied to Ross, Ed and myself.

17 Q. What's the date on this email?

18 A. It is 3rd of November 2010.

19 MR. JOHNSTON: Your Honor, at this time the
20 government moves to admit Government Exhibit 59.

21 MR. WEINBERG: No objection.

22 THE COURT: Admitted.

23 (Exhibit No. 59 admitted into evidence.)

24 MR. JOHNSTON: Permission to the publish to the
25 jury?

1 THE COURT: Yes.

2 MR. JOHNSTON: If we could zoom in again on the
3 text, please.

4 Q. Mr. Boomgaardt, who is Adnan Choudhary?

5 A. He was one of my transition analysts, so he worked for me
6 on my team.

7 Q. And what role did he play in a transition?

8 A. He was the main project manager, so he was the one who
9 ran the operational side, the nuts and bolts of the
10 transition, not the trading side, but all of the planning,
11 analysis, that kind of thing.

12 Q. Then the subject line, "Project X RNSET3 Trading
13 Instructions." What is that referring to?

14 A. Project X was just our internal name for this KIA
15 transition. RNSET3 is the account name, our own internal
16 account name for the KIA.

17 Q. And what's included on this attachment -- what is
18 including as an attachment to this email?

19 A. The trade file, the actual buys and sells that need to be
20 done.

21 Q. What types of assets would be listed in the trade file?

22 A. Stocks and bonds. For this one I think it was
23 particularly just bonds.

24 Q. And who is this email being sent to on the To line
25 specifically?

1 **A.** Those are all bond traders, both London-based and
2 Boston-based.

3 **Q.** Who are the London-based traders?

4 **A.** George McLean, Daniel Hines, and Ian Barnes are
5 London-based.

6 **Q.** Who are the U.S. traders?

7 **A.** Thomas Clemmenson and Steve Finocchi on that.

8 **Q.** So the last two would be based in Boston?

9 **A.** That's right.

10 **Q.** Why do you need both traders in London and traders in
11 Boston to trade bonds for you?

12 **A.** The U.S. team will trade the North American bonds, and
13 the European team will trade everything else.

14 **Q.** Directing your attention to the fourth line of text where
15 it says, "Comms, 2 BPs of value on the sell side and 18 BPs
16 of value on the buy side," what is that referring to?

17 **A.** That's telling the traders what commissions to book out
18 on those trades.

19 **Q.** So again, are we talking about commissions being applied
20 to both selling the clients' old assets and also when they're
21 buying their new assets?

22 **A.** Yes, yeah, and two different commission rates to be
23 charged on the sell side and a different one on the buy side
24 as well. So two BPs on the sale side, 18 BPs on the buy
25 side.

1 **Q.** Do you know why the buy side commission is nine times
2 higher than the sell side commission?

3 **A.** Similar to the last KIA transition, they were going from
4 very short-dated, short-duration assets to much longer,
5 longer-dated.

6 **Q.** Which meant what?

7 **A.** Which meant that the trading range tended to be -- tended
8 to be wider, the bid-ask spread tended to be bigger, and the
9 availability of pricing data was more opaque. So the ability
10 to take larger commissions existed on the buy side more so
11 than the sell side.

12 **Q.** Are these similar rates or similar levels of commission
13 to what you took in the prior KIA transition?

14 **A.** They look pretty similar. I would need to see the
15 details of the bonds but certainly similar in terms of value
16 from what we've seen in the last execution file.

17 **Q.** When it says "Comms," is that an abbreviation from
18 something?

19 **A.** Commissions.

20 **Q.** And you used the term commissions even though these are
21 bonds?

22 **A.** Yes, yeah.

23 **Q.** What are synonymous terms for commissions on bonds?

24 **A.** Markup, markdown, spreads. But again, those were the
25 mechanisms for taking the commissions. They all really refer

1 to the same thing.

2 **Q.** Then directing your attention to the fourth line from the
3 bottom where it says, "All, please show the high and low of
4 the day before booking the trades. Please forward to Rick,
5 Ed and me." What's your understanding of why Adnan is giving
6 this instruction to the traders?

7 **A.** Same as the previous KIA transition, so that we can look
8 at the executions that are done in the market relative to
9 where the highs and lows are depending on whether we're
10 buying and selling and make sure that our commissions are
11 both as big as they could be but also that it's not taking
12 the executions wildly outside of the range of the day, so
13 less likely to be noticed.

14 **Q.** So if the traders do a good job, who is going to get the
15 benefit of that outperformance?

16 **A.** Well, State Street will. Although on this one I think
17 we're being -- we're actually trying to put the same
18 commission on all of the trades at least, so it's less of a
19 performance bonus for State Street, I suppose.

20 **Q.** But then if it's already established before trading
21 starts what you're going to charge, why do you need to see
22 the highs and lows of the day?

23 **A.** Well, exactly for what I just explained, so that we can
24 make sure that we're -- that the commissions for State Street
25 are going to be high and that they're unlikely to be noticed

1 by the client because we're keeping them close to the trading
2 range of the day.

3 **Q.** So what happens if you looked at the client price plus
4 the 18 BP commission and it was a bit higher than the high of
5 the day?

6 **A.** We might scale that down so that what gets booked to the
7 client is inside that range. But I don't recall whether that
8 was done for these ones or not.

9 **Q.** Is Mr. McLellan copied on this email?

10 **A.** Yes, he is.

11 **Q.** Did this trade end up going through?

12 **A.** Yes, it did.

13 **Q.** Do you know how much commission State Street earned on
14 this?

15 **A.** Again, I can't remember exactly, but again, it was a very
16 good -- a very good transition that was in the millions of
17 dollars of commission.

18 **Q.** Another elephant deal?

19 **A.** Another elephant deal.

20 **Q.** Did you provide a post-trade to the client?

21 **A.** Yes.

22 **Q.** Did you tell them how much you had earned in revenue?

23 **A.** No.

24 **Q.** Why not?

25 **A.** Well, they didn't want to see. Again, it was a zero

1 commission deal. It wasn't our normal course to show it
2 anyway, but we certainly didn't show it; and as far as I
3 know, they didn't specifically ask for it. They certainly
4 didn't specifically ask me for it, anyway.

5 **Q.** Did you feel comfortable with this deal?

6 **A.** No, I didn't feel comfortable with it, any more
7 comfortable with it than I did the last KIA deal.

8 **Q.** Did you have any conversations with Ed Pennings about
9 whether anyone above him approved of this?

10 **A.** Yes, yeah, I definitely had conversations with Ed around
11 this one and knew of Ross's approval of it via Ed. Again, I
12 don't recall having a specific conversation with Ross, but
13 certainly I do remember having a specific conversation with
14 Ed around this one.

15 MR. JOHNSTON: You can take that down.

16 **Q.** Were there additional opportunities to charge hidden
17 commissions in this time period?

18 **A.** Yes.

19 **Q.** Are you aware of a client called the NTMA?

20 **A.** Yes.

21 **Q.** What are they?

22 **A.** The NTMA are the National Treasury Management Agency, so
23 a government organization in Ireland. The fund that they
24 were looking after was a fund that was set up to fund future
25 pension liabilities for the Irish people, so no specific

1 employees but rather the populations as a whole.

2 **Q.** Had you done transitions for the NTMA before?

3 **A.** Yes, we were on a panel of preferred providers for them
4 for transition exercises, yes.

5 **Q.** How did you hear of the opportunity to land the NTMA deal
6 in late 2010?

7 **A.** Through Ed Pennings and Cassie Waller, who were the ones
8 who were the relationship managers for the NTMA.

9 **Q.** Do you know why NTMA was looking for a transition manager
10 at this time?

11 **A.** Yes, specifically for that deal was the -- on the back of
12 the credit crunch, the Irish banks were in need of a cash
13 injection, and the Irish government was selling down a large
14 portion of the assets in this fund in order to provide that
15 money to the Irish banks to stabilize them. So this was a
16 liquidation, a sell only.

17 **Q.** So no buying going on?

18 **A.** No.

19 **Q.** Did you play any role in drafting a proposal to NTMA?

20 **A.** Yes. Certainly the pre-trade analysis and trading
21 strategy portions of it, certainly.

22 **Q.** What types of assets were they looking to sell in this?

23 **A.** A combination of global equities and bonds.

24 **Q.** And how large of a deal are we talking?

25 **A.** Very sizable, billions and billions of dollars.

1 **Q.** What type of revenue opportunity did that present to
2 State Street?

3 **A.** Again, that is a huge amount of trading. It's a very big
4 transition. So on the face of it, it represented a very good
5 revenue opportunity for State Street.

6 **Q.** Do you know whether there was any competition to land
7 NTMA?

8 **A.** Yes, we weren't the only -- we weren't the only
9 transition manager on their panel of providers. So we knew
10 there was competition, yeah.

11 MR. JOHNSTON: I'd like to show an email only to
12 the jury, please -- sorry. Only to the witness, not the
13 jury. You'll get it soon. Government Exhibit 68, please.

14 **Q.** Do you recognize this email, Mr. Boomgaardt?

15 **A.** Yes.

16 **Q.** What is it?

17 **A.** It's an email from Ed Pennings to myself.

18 **Q.** What's the date?

19 **A.** 8th of December, 2010.

20 MR. JOHNSTON: Your Honor, the government moves to
21 admit Exhibit 68 into evidence.

22 MR. WEINBERG: No objection.

23 THE COURT: Admitted.

24 (Exhibit No. 68 admitted into evidence.)

25 MR. JOHNSTON: Permission to publish?

1 THE COURT: Yes.

2 Q. All right. Mr. Boomgaardt, I want to direct your
3 attention to the bottom email in the chain.

4 A. Mm-hmm.

5 Q. Mr. Pennings writes, "We should put a high level summary
6 of track record in as well. We need to tell them that we do
7 at least eight-ish transitions per year, over 10 billion
8 globally and another 10 between 5 and 10 billion." What is
9 he referring to there?

10 A. He's referring to the proposal that we need to -- or are
11 putting together at that stage for the NTMA. And in that,
12 one of the things they've asked for I believe is, you know,
13 what's our experience in dealing with large transitions. So
14 he's asked us to put in a high level summary of what our
15 track record is but doesn't seem too concerned about what our
16 actual track record is but rather telling me what it should
17 say.

18 Q. So he's giving you advice on what to tell NTMA in the
19 proposal?

20 A. Yes.

21 Q. What about the part where he says, "Fees, 1.25 BPs, no
22 commissions"; what do you understand that to mean?

23 A. That we're not going to be charging a per-trade
24 commission on this but rather agree on a flat fee on the
25 value of the assets that are coming into the transition. So

1 how much is there to sell, and we'll charge you a flat fee of
2 1.25 basis points on the value of that those assets, a basis
3 point being a 100th of a percent.

4 **Q.** In the first three deals we talked about, the two KIA
5 ones and Dutch Doctors, was there anything like a flat fee
6 there?

7 **A.** Well, no, there was no fee.

8 **Q.** So where did the idea come up to suggest a flat fee to
9 NTMA?

10 **A.** I don't recall if that was our idea or their idea. There
11 was a movement around this time in the industry in general
12 for clients to have a flat fee rather than necessarily having
13 a -- have the fee captured as a trading commission. Some of
14 them started to like the idea of a flat fee instead.

15 **Q.** Why would they want a flat fee rather than a commission?

16 **A.** There could be lots of reasons. If they didn't want
17 the -- if they didn't want the cost to be coming out of the
18 fund but rather wanted it done at corporate level or
19 something like that, this was a way to just differentiate the
20 fee from the actual work that needed to get done. So there
21 are lots of reasons why they might want to do that.

22 For us, what a flat fee allowed us to do was to
23 show flexibility in how we could take our commissions --
24 sorry -- our remuneration, how we got paid for the client.
25 So it wasn't uncommon. It still wasn't the -- it definitely

1 wasn't the majority, but it wasn't that uncommon either.

2 **Q.** Did State Street care whether you entered revenue as a
3 flat fee or a commission?

4 MR. WEINBERG: I object to State Street, as a
5 company of thousands of people, and ask him to focus.

6 MR. JOHNSTON: I can clarify.

7 THE COURT: Thank you.

8 **Q.** Did the London transition team care whether it was
9 compensated as a flat fee or as a commission?

10 MR. WEINBERG: We're now down to hundreds, but
11 again, I object, Your Honor.

12 MR. FRANK: Your Honor, I also object to the
13 speaking objections.

14 MR. JOHNSTON: He has testified that he was the
15 head of the transition management.

16 THE COURT: Just ask him if he cared --

17 MR. JOHNSTON: He and his managers cared.

18 **Q.** Did you and Ed Pennings care whether you earned money as
19 a flat fee or a commission?

20 **A.** No, no. Whether we took the commission on a traded basis
21 or charged it as an invoice at the end, we didn't mind too
22 much. It didn't really matter. The theory being the quantum
23 would be similar.

24 **Q.** Typically how would you go and calculate the flat fee
25 that you would propose if you were going to go in that

1 direction?

2 **A.** Typically we would look at the trading and see how much
3 commission we would charge if we were going to charge a
4 trading commission and use that number as the basis for the
5 flat commission that we would charge them if we were going to
6 charge them a flat fee.

7 So if our analysis showed us that we were going to
8 get something like \$200,000 of trading commission, we would
9 say, "Okay, you can either do it as a commission base or you
10 can pay us \$200,000 to be invoiced at the end."

11 **Q.** So then directing your attention to the follow-up email
12 that Mr. Pennings sends to you, "Just to clarify, 1.25 BP is
13 management fee. The extra quarter point makes it looks like
14 we actually thought about it and did the calculations." What
15 did you understand him to mean there?

16 **A.** That he thinks we're being clever but that 1.25 basis
17 points is our fee for managing the transition and that we've
18 done that calculation that I just explained, which is looking
19 at commissions and how much we'd need to charge.

20 **Q.** Do you know whether 1.25 basis points management fee was
21 a high number or a low number for this type of deal?

22 **A.** It's low. That's very aggressive, yeah.

23 **Q.** Was it intentionally low?

24 **A.** Yeah, yeah, and it needed to be. I mean, as I said, we
25 were in competition, so it was going to need to be a low

1 number in order to win the transition.

2 **Q.** So you needed -- would you say aggressively low?

3 **A.** Yeah. That was our understanding, and that's certainly
4 an aggressively low number. 1.25 basis points would barely
5 cover the cost of doing that transition for us.

6 **Q.** Were you going to not make any money off of it?

7 **A.** At 1.25 basis points we would -- yeah, that would be a
8 break-even kind of price for us, I believe.

9 **Q.** Did you intend to make no further money?

10 **A.** No.

11 **Q.** What did you intend to do?

12 **A.** Apply the same -- the same plan that we had with KIA,
13 which is to charge a commission anyway.

14 **Q.** In this case, what did you want the client to believe
15 when you suggested a management fee?

16 **A.** That we wouldn't be charging a commission, that it was
17 instead of charging a trading commission.

18 MR. JOHNSTON: I now want to show just the witness
19 Government Exhibit 70.

20 THE COURT: All right.

21 **Q.** Do you recognize this document, Mr. Boomgaardt?

22 **A.** Yes, I do.

23 **Q.** What is it?

24 **A.** It is an email from me to the client, NTMA, copied to Ed
25 Pennings.

1 Q. What's the date?

2 A. It's the 9th of December 2010.

3 Q. Is there an attachment to this email?

4 A. Yes, there is.

5 Q. What's that attachment?

6 A. It is a copy of our proposal for that NTMA transition.

7 MR. JOHNSTON: Your Honor, the government moves to
8 admit Exhibit 70s and 70-1 into evidence.

9 MR. WEINBERG: No objection.

10 THE COURT: Admitted.

11 (Exhibit Nos. 70 and 70.1 admitted into evidence.)

12 MR. JOHNSTON: Permission to publish to the jury?

13 THE COURT: Yes.

14 Q. Who is Killian Buckley?

15 A. He's the client at NTMA, our main client contact there.

16 Q. Who are cc'd on this email?

17 A. Ed Pennings and Cassie Waller.

18 Q. And what's the attachment that you've put to this email?

19 A. Yeah, it's the proposal that we sent back to NTMA. I
20 guess it's not the first one we sent, but rather he had some
21 clarification points on the first one, so this is an updated
22 and corrected version.

23 Q. So you've made some edits and are sending an updated
24 version of this proposal to the client?

25 A. That's right.

1 MR. JOHNSTON: Could we take a look at Exhibit
2 70-1, the attachment.

3 Q. Do you recognize this document?

4 A. Yes, I do.

5 Q. What is it?

6 A. It's a copy of our proposal for that NTMA transition.

7 Q. Did you play any role in preparing it?

8 A. Yes, certainly in overseeing the analysis and trading
9 strategy elements.

10 Q. And what about the content in there, the narrative
11 content?

12 A. Some of it definitely, yeah. And I certainly read it
13 before it went out.

14 MR. JOHNSTON: Let's take a look at page 6, please.
15 If we can zoom in to the second paragraph below the "Equity"
16 heading.

17 Q. Again, what is an equity?

18 A. An equity is a share, so rather like a stock rather than
19 a bond, yeah.

20 Q. And is this transition going to involve lots of buying
21 and selling of stocks -- or I guess just selling?

22 A. Just selling of stocks, yeah.

23 Q. I want to direct your attention to where it says, "In our
24 fiduciary role, we always act as agent to the client. By not
25 taking principal positions, we avoid the conflicts that will

1 be created through executing transitions and also running a
2 proprietary trading book. We do not provide services such as
3 investment banking in order that we can concentrate on our
4 investor client base and avoid the conflicts of interest. We
5 believe the best way to manage potential conflicts of
6 interest is by not having them in the first place."

7 What are you communicating to the client here?

8 **A.** We're saying that we act in a fiduciary role, so putting
9 the client's interest ahead of own; and we're acting as an
10 agent, so we are going out and executing in the market on
11 their behalf.

12 **Q.** And when you are saying you're going to execute in the
13 market on their behalf, who is supposed to get the market
14 price?

15 **A.** The client is supposed to get the market price, plus or
16 minus any agreed commission that we have with them.

17 **Q.** So for every security they want to buy or sell, they get
18 the market price plus whatever agreed-upon commission?

19 **A.** Yes.

20 **Q.** And that's the promise you make to the clients?

21 **A.** That's right, yeah.

22 MR. JOHNSTON: Let's take a look at page 8, please.
23 Can we zoom under the fixed income portion?

24 MR. WEINBERG: Excuse me, Mr. Johnston. I move to
25 strike the last answer, Your Honor. There's no predicate for

1 the fact that he made that promise to clients. It's just a
2 generalized statement.

3 MR. JOHNSTON: Your Honor, if I may respond.

4 THE COURT: Overruled. Ladies and gentlemen of the
5 jury, you can take that as a statement from State Street,
6 this witness had some part in preparing some portion of this
7 document, whether or not he prepared that portion as a
8 proposal to NTMA.

9 MR. WEINBERG: May I reserve the motion to strike
10 at the recess, Your Honor, so we're not burdening the
11 dialogue.

12 THE COURT: Yes. Go ahead.

13 **Q.** Directing your attention to this content that's
14 underneath "Fixed Income." Can you tell us what fixed income
15 is?

16 **A.** It's another word for bond, yeah.

17 **Q.** So when you, in the second large bullet point where it
18 says, "Employ an agency trading strategy to ensure best
19 execution," what are you telling clients you will do for them
20 when you trade bonds?

21 **A.** That we are going out to the market on their behalf and
22 finding them the best execution, so getting them the best
23 execution that we can, and that we're going to be giving them
24 the execution that we get in the market, again plus or minus
25 any agreed commission.

1 **Q.** So market price plus your commission?

2 **A.** Yeah.

3 MR. JOHNSTON: Let's take a look at page 9, please.
4 Let's zoom in on the top -- sorry. Just yeah, the top
5 paragraph.

6 **Q.** Directing your attention to where it says, "As crossing
7 will be the most important tool for minimizing costs in the
8 transition, we propose to charge zero commission on all
9 trading activity. We propose to charge a management fee of
10 1.25 basis points, 0.0125 percent, on the assets entering
11 transition. This fee will cover our cost incurred for the
12 transition and will align our interest with the NTMA in
13 finding the best natural liquidity through our unrivaled
14 crossing network." Can you explain what crossing is?

15 **A.** Sure. Crossing is just simply trading between State
16 Street's own internal clients. So if we have, in this case,
17 the NTMA looking to do a lot of selling, we may have another
18 transition client who is looking to do lots of buying. And
19 we call that crossing. And we try and match up those trades
20 so that our client that's buying and our client that's
21 selling will get the midpoint, and State Street's general way
22 of doing business is to not charge any commission on those
23 crossing trades.

24 **Q.** So the more crossing, the better for the client?

25 **A.** In theory, it can be. Crossing isn't always the best

1 thing for the client, but in this case, because there's so
2 much volume through, crossing could be a really important
3 tool.

4 **Q.** And so what do you mean that when you say, changing a
5 management fee will align our interest with the NTMA," what's
6 the connection?

7 **A.** Sure. Because generally are we didn't charge commissions
8 on crossing, there would be an incentive to possibly not
9 cross as much as we could do because we wanted to do market
10 trading, which we would get a commission for.

11 What we're saying there is if we've agreed to this
12 flat fee, then we're really agnostic to whether we're doing
13 market trading or crossing; we don't mind.

14 **Q.** Whereas if you are getting a commission, maybe it's a
15 conflict between giving them a cross trade or doing a market
16 trade?

17 **A.** Yeah, there's certainly a conflict that needs to be
18 managed.

19 **MR. WEINBERG:** Objection to the leading, Your
20 Honor.

21 **THE COURT:** Sustained as to leading. Don't lead.
22 Leading, ladies and gentlemen, is when -- a non-leading
23 question is who, what, when, where, why; what happened next;
24 who said this; what made you believe that the things in the
25 response to the last question. And that causes the witness

1 to be testifying and answering. Generally on direct, you ask
2 non-leading questions, other than there are exceptions,
3 preliminary matters and certain kinds of things, because
4 non-leading questions you hear from the witness, which is
5 generally the purpose of direct examination.

6 Cross-examination, which we haven't come to but you
7 will come to, you'll find, you'll see that there's mostly
8 leading questions. This cross-examination ordinarily is
9 mostly to test the witness's memory, accuracy, truthfulness
10 or various other aspects of the testimony. So on
11 cross-examination, leading questions are generally permitted.

12 So there are various exceptions to these rules that
13 apply in different cases. But it's not always easy to ask
14 non-leading questions on a direct examination, but
15 non-leading questions are more helpful because you hear the
16 words directly from the witness who was there as opposed to
17 the lawyers who weren't there. Go ahead.

18 **Q.** Let's take a look further down the page to the table, the
19 first table. What information have you included here?

20 **A.** That is our total cost estimate for the transition. As
21 they've outlined it to us, that's our estimate of the cost.

22 **Q.** So then directing your attention to where it says "Equity
23 Commissions" --

24 **A.** Mm-hmm.

25 **Q.** What are you telling the client you will charge them?

1 **A.** Nothing, no equity commissions.

2 **Q.** And what about fixed income commissions, how much are you
3 telling them you'll charge them?

4 **A.** Also zero.

5 **Q.** What did you want the client to understand when you wrote
6 that it was zero commissions for fixed income and equities?

7 **A.** That we weren't going to be charging a commission for
8 trading those stock and bond executions.

9 **Q.** Let's take a look at the other table at the bottom. Why
10 do you include it as a second table?

11 **A.** They provided a couple of scenarios or ways that we might
12 execute this. Either they provided them or we came up with
13 two different ideas as to how we might do this. I can't
14 remember which it was. But this was including a -- to put a
15 hedge on, so to try and eliminate the market risk for them up
16 front really quickly. But just a different strategy for
17 executing the transition.

18 **Q.** And in either scenario, what are you going to charge in
19 commissions?

20 **A.** Zero commissions on equities were included, and fixed
21 income commissions were also zero, so we weren't proposing to
22 charge a commission in either scenario.

23 **Q.** I want to draw your attention to some of the other cost
24 categories that you have here. There's an equity bid-ask
25 spread. What is that supposed to encompass?

1 **A.** That's a market cost. As I said, if you look at a quoted
2 price in the stock market, you will see a price where you can
3 buy and a price where you can sell. Because this is a
4 sell-only transition, you're only on one side of that market.
5 The fair price for that asset is the midpoint between where
6 you can buy it and where you can sell it, and that is
7 quantifying the difference between that midpoint and the
8 price where you can actually sell it. So it's a cost to the
9 fund of selling.

10 **Q.** Is that an estimate or a promise?

11 **A.** It's an estimate.

12 **Q.** What about market impact?

13 **A.** Again, that's the -- that's the effect that this selling
14 will have on the prices in the market. And again, that's an
15 estimate only.

16 **Q.** And what about taxes and fees?

17 **A.** That is a very well known -- we know what the taxes and
18 fees are going to be to a pretty high degree of certainty.
19 That doesn't change.

20 **Q.** Who are these taxes and fees paid to?

21 **A.** Oh, to the government and agencies around the world that
22 charge them. Like an SEC fee in the U.S. for trading, they
23 are exchange and government imposed charges.

24 **Q.** These aren't broker fees?

25 **A.** No.

1 **Q.** And what about futures?

2 **A.** Futures, again, we have a hedging strategy. So futures
3 are derivative instruments.

4 **Q.** I think you may need to explain what hedging means.

5 **A.** Sure. Hedging is a way for us to help them eliminate
6 that opportunity cost risk that I talked about earlier, the
7 market risk, the risk of the market moving around.

8 So in this particular transition because it's a
9 sell-only transition, the risk to this client is that the
10 markets go down quite a lot as we're trading this. In this
11 scenario that we're talking about here, we would sell that
12 market exposure, so get them into a position using
13 derivatives, using futures that would -- the position that we
14 would establish in the futures would go up if the market went
15 down, so effectively hedging that position.

16 **Q.** Mr. Boomgaardt, who provides futures in the deal?

17 **A.** Well, we would be executing them, and we had a clearing
18 arrangement as well, which meant the operational side of
19 being able to hold the futures, we would provide them with
20 that service as well, so there were some charges that State
21 Street would make money on, so a commission-based charge for
22 those futures as well as the clearing capability, so the
23 ability to hold those futures.

24 **Q.** So these futures are a separate cost of doing the
25 transition?

1 **A.** They are a separate cost specific for that strategy.

2 **Q.** Is that the subject of a separate price or negotiation
3 with the client?

4 **A.** It is. It's included in the agreement that we have with
5 the client, so in the legal agreements that govern the
6 transition, that would be mentioned separately.

7 **Q.** And then what about the FX spread, what is that?

8 **A.** The same kind of thing. There is, in this particular
9 scenario, they wanted to have all of their proceeds in Euros,
10 because that is the currency of Ireland, that's the currency
11 they wanted to have it all in. Not all the assets that they
12 were selling were denominated in Euros, so they needed to do
13 foreign exchange to get the dollar-based assets into Euros,
14 the U.K. pounds into Euros, whatever other non-Euro
15 currencies they were. So that involved some trading as well.
16 You have to sell dollars to buy Euros.

17 Again, if you look at any exchange, a price for an
18 exchange rate at any bank, you will see a price where you can
19 buy and a price where you can sell. And again, the midpoint
20 is the kind of fair price for doing that exchange, but you're
21 only on one side or the other. So that FX spread is a
22 measure of that spread cost.

23 **Q.** Who provided the foreign exchange services for this
24 transition?

25 **A.** State Street's foreign exchange trading desk was the

1 counterpart that we used.

2 **Q.** Do you have any control over the State Street foreign
3 exchange desk?

4 **A.** No, no. They were a separate part of the business.

5 **Q.** Did clients ever negotiate the price of the foreign
6 exchange with you?

7 **A.** Not that I'd ever seen, no.

8 **Q.** Did you have the ability to price foreign exchange
9 yourself?

10 **A.** No.

11 **Q.** Of all of these things, what did you have the ability to
12 negotiate with clients on, all of these categories?

13 **A.** Commissions.

14 **Q.** And was that what you negotiated with them on?

15 **A.** That was -- we did negotiate with almost every client
16 around the commissions we charge but none of the rest.

17 **Q.** Finally, the fixed income bid-ask spread, is that the
18 same as the equity bid-ask spread, just for bonds?

19 **A.** That's right. It's analogous to the equity bid-ask
20 spread but for bond trading.

21 THE COURT: You're leading, Mr. Johnston.

22 **Q.** So when you laid out these tables like this, did you
23 intend to tell the client that State Street transition would
24 be earning money buried in any of these other categories?

25 **A.** No. Those are all -- they're market costs, costs of

1 trading in the market.

2 **Q.** And what did you want the client to understand would be
3 the money that the transition desk would be earning?

4 **A.** The 1.25 basis points that we proposed and no equity
5 commissions or fixed income commissions.

6 MR. JOHNSTON: You can take this down.

7 **Q.** Did you come up with this fee structure on your own, Mr.
8 Boomgaardt?

9 **A.** No.

10 **Q.** Who if anyone did you discuss this with?

11 **A.** Yeah, I discussed it in great detail with Ed Pennings and
12 in less detail with Ross McLellan.

13 **Q.** Did you have conversations with Ross McLellan about the
14 NTMA proposal?

15 **A.** Yes.

16 **Q.** On the phone or --

17 **A.** Yes, on the phone, yeah.

18 **Q.** And what do you recall about those conversations?

19 **A.** Well, NTMA was a -- I guess a different transition, in
20 that we took an undisclosed commission on equity trading as
21 well as bond trading, so there were some conversations around
22 what mechanism there would be in stock trading to allow us to
23 take commissions on that. And it was around that guise, I
24 guess, that I remember the conversations with Ross.

25 **Q.** You previously testified that this was -- you didn't know

1 how you could take any commissions on equities?

2 **A.** (Nods.)

3 **Q.** So can you describe what these conversations were that
4 you had about how you could do the same with equities on the
5 NTMA deal?

6 **A.** Yeah. I mean, from my perspective coming into those
7 conversations I didn't really understand the mechanics that
8 well of how equities were going to work, but it was using
9 a -- the only principal account that our equity traders had,
10 which was occasionally for clients, and I had never seen it
11 used for a transition client, but some clients liked to trade
12 with a real focus on the volume-weighted average price over a
13 day.

14 So that is a good -- the volume-weighted average
15 price gives you a good indication of what the average
16 execution looked like in a certain stock over the day. Some
17 clients would want to have that price guaranteed. And State
18 Street's stock trading desk did have the ability to guarantee
19 that people would get that volume-weighted average price in
20 which point the traders would trade during the day and they
21 would be obliged to give the client the execution at that
22 volume-weighted average price. If the executions on the day
23 were better or worse than the average price, that profit or
24 loss stayed with State Street.

25 **Q.** So you're saying that this separate account was something

1 that just existed at State Street?

2 **A.** It did. It wasn't something that certainly any of the
3 clients that I had been involved with had ever used before.
4 It wasn't really one that we used for transition management
5 clients.

6 **Q.** How did this account enable you to charge hidden
7 commissions on equities?

8 **A.** Because it was a principal account, again, it didn't
9 capture a commission line so in the same way that the
10 instructions for bonds go out to the client's custodian with
11 a net price, so did the executions coming out of that
12 volume-weighted average price or VWOP account would also
13 include only the price of the execution rather than where the
14 actual executions were done in the market, it wouldn't
15 include that.

16 **Q.** So what you're saying is if you used the VWOP account --

17 **MR. WEINBERG:** I object to the summary, Your Honor.
18 It's going to be a leading question.

19 **THE COURT:** Well, I'm overruling the objection
20 because I haven't heard the question yet, but I remind you
21 not to lead.

22 You can loop --

23 **MR. JOHNSTON:** That was my intention, Your Honor.

24 **Q.** You testified, Mr. Boomgaardt, that when you traded
25 stocks, you traded bonds, one price would be reported; is

1 that correct?

2 **A.** Yes, that's right, just the client's execution.

3 MR. WEINBERG: Leading question, Your Honor.

4 MR. JOHNSTON: He's testified to this like ten
5 times. We're trying to loop it.

6 MR. WEINBERG: That's why we don't need an 11th.

7 THE COURT: If you say something ten times, it
8 becomes cumulative. I'll overrule that objection. Once
9 you've asked it, they've heard it, we can move on.

10 **Q.** Could you explain how the VWOP account enabled you to
11 only show the client one price instead of a price and a
12 commission separately?

13 **A.** Because it was a principal account. So the risk of --
14 State Street was taking on risk. So the agreement with the
15 client was that they would get the volume-weighted average
16 price, and that was the price that got booked out to them.
17 It didn't -- there's no obligation under that, under acting
18 as that principal. And again, this is my understanding. I
19 wasn't involved in all the mechanics of how that worked
20 because trading wasn't part of my business.

21 MR. WEINBERG: With all due respect, Your Honor, if
22 he wasn't involved, this shouldn't be a subject for
23 testimony.

24 THE COURT: He can testify to his understanding of
25 this.

1 **Q.** Did NTMA request use of the VWOP account?

2 **A.** No, not to my knowledge.

3 **Q.** And have you ever used the VWOP account for any
4 transition client?

5 **A.** Not for any of the clients or any of the transitions that
6 I had been involved with in Europe, no.

7 **Q.** What is the sole purpose to use the VWOP account for the
8 NTMA deal?

9 **A.** For the NTMA deal, it was solely to allow us to take a
10 commission on those trades that wasn't disclosed to the
11 client.

12 **Q.** Who did you have those discussions with about the VWOP
13 account?

14 **A.** Ed Pennings, Ross, and Ian Holden, who was our head of
15 trading in London I remember having conversations with.

16 MR. JOHNSTON: Can we actually pull up 70.1 again.
17 Go to page 36. Go to the third paragraph, please.

18 **Q.** Let's take a look where it says, "State Street will act
19 as a fiduciary for the portfolio for the entire transition
20 period. NTMA executions are not conflicted by proprietary
21 trading. In our fiduciary role, we always act as agent to
22 the client. By not taking principal positions, we avoid the
23 conflicts that will be created through executing transitions
24 and also running a proprietary trading book. We do not
25 provide services such as investment banking in order that we

1 can concentrate on our investor client base and avoid the
2 risk of conflicts of interest."

3 THE COURT: What's the question?

4 Q. Mr. Boomgaardt, directing your attention to where it says
5 "principal positions," what are you telling the client that
6 State Street does not do?

7 A. That we're acting as agent and we don't take -- we don't
8 take principal positions, so we don't take positions on our
9 own book, that we're acting -- we're trading on the client's
10 behalf.

11 Q. Is the VWOP account a principal position; would you use
12 that?

13 A. Yes, it is.

14 MR. JOHNSTON: I would like to show the witness
15 just Government Exhibit 77.

16 THE COURT: Just the witness?

17 MR. JOHNSTON: Yes, just the witness, 77.

18 Q. I direct your attention to the Send and To and Date line.
19 Who is this email from?

20 A. It is from Ed Pennings to me.

21 Q. Who is it to?

22 A. To me.

23 Q. I'm sorry. All right. And then the date?

24 A. December 23, 2010.

25 MR. JOHNSTON: Your Honor, the government moves to

1 admit Exhibit 77.

2 MR. WEINBERG: May I have a moment, Your Honor?

3 THE COURT: Yes.

4 MR. WEINBERG: Excuse me, Mr. Johnston. There are
5 a lot of books.

6 I have no objection.

7 THE COURT: Admitted. You can publish it.

8 (Exhibit No. 77 admitted into evidence.)

9 **Q.** We're looking at a bit of an email change, so if we could
10 start with page 2 to the email beginning at 17:43. What have
11 you written here to Mr. Pennings?

12 **A.** That I had spoken, had a conversation with Killian --
13 that being Killian Buckley at NTMA -- and that we had agreed
14 to a rate of 1.65.

15 **Q.** Is that a different rate than you had proposed in the
16 original proposal?

17 **A.** Yes, it is.

18 **Q.** And why is that?

19 **A.** They divided the transition between a couple of different
20 transition managers, so they divided the assets so that we
21 were getting some of the assets that were a bit higher cost
22 to trade, things like emerging market equities and small cap
23 U.S. trades. So we had gone back and said we will need to
24 increase our flat fee because the things you've given us are
25 higher cost to trade.

1 Q. Killian Buckley, Killian, you're saying, is the NTMA guy?

2 A. Yes, that's right. He's our main contact at the NTMA.

3 Q. What was the value of the portfolio that they did decide
4 to give to you?

5 A. I believe it was 4 billion or so of trading.

6 Q. And so how would the flat fee that you would earn be
7 calculated off the 4 billion?

8 A. Well, it would be -- it would be 1.65 basis points
9 multiplied by the value of those assets.

10 Q. Is this the price that you suggested, or did you suggest
11 a higher price?

12 A. We went back with a higher price. I think we went back
13 with 2, I think, 2 basis point proposal.

14 Q. What happened --

15 A. He thought that 2 was too high, and we negotiated and
16 settled on 1.65.

17 MR. JOHNSTON: Could we scroll up to the next
18 email. Going in sort of chronological order.

19 Q. What's the response from Ed?

20 A. He said no reconsidering of the entire mandate, meaning
21 they are going to divide it. We couldn't talk them into
22 giving us the whole thing.

23 MR. JOHNSTON: Let's go back to the first page and
24 start at the bottom.

25 Q. I guess this is -- then what did you respond to Ed?

1 **A.** I said it didn't sound like that was something that they
2 were considering, but, you know, anything is possible I guess
3 but certainly not anything I was hopeful about.

4 MR. JOHNSTON: Go further up, please.

5 **Q.** Then what did he ask?

6 **A.** He had asked whether they had instructed the other
7 transition manager that they had won a part of the transition
8 yet.

9 **Q.** And the next, please. What's your response?

10 **A.** I said he didn't say. The only thing he was concerned
11 about was our quote of 2 basis points, "was taking a piss,"
12 which is a I guess a British-ism for being outrageously high
13 or that it was too high anyway, was his feedback.

14 **Q.** What was too high?

15 **A.** Our two basis point commission, our two basis point flat
16 fee proposal to him he didn't like.

17 **Q.** So then what was the final price agreed upon?

18 **A.** 1.65, so somewhere between the 1.25 we had originally
19 offered and the two that we were trying to get.

20 **Q.** I don't know if I can draw your memory to the table we
21 were looking at, but what's the overall cost of the
22 transition?

23 **A.** It was on the order of 25 to 30 basis points, something
24 like that.

25 **Q.** So that would be the cost that would be potentially faced

1 by the fund overall?

2 **A.** That's right.

3 **Q.** So with that cost, how much are they negotiating, having
4 negotiated you down?

5 **A.** Well, they negotiated us down by 0.35 basis points.

6 **Q.** 0.35, even though they're facing 30, potentially?

7 **A.** Correct.

8 MR. JOHNSTON: Could we go further up. What was
9 your understanding of why clients negotiated like this?

10 **A.** Because it was really the only element of the cost that
11 they had a direct control over. The rest of it was, they
12 were market costs and they were estimates. This one they did
13 have a direct control over. And 0.35 basis points probably
14 sounds small, but when you multiply it by \$4 billion, it's
15 not small anymore.

16 **Q.** What is Mr. Pennings' response?

17 MR. JOHNSTON: If you could highlight that, please,
18 Erin.

19 **Q.** "You're a rock star. Just curious if they bought our
20 strategy story." What is he saying?

21 **A.** Did they like our strategy around how we were proposing
22 to do this transition, the hedging strategy that we had
23 talked about and all of those things.

24 **Q.** What about when he says, "I bet Nomura gives them a
25 kickback"?

1 **A.** That is Ed being disparaging of our commission.

2 **Q.** Is Nomura one of your competitors?

3 **A.** Yes, yeah, and they were one of the people that was on
4 NTMA's panel as well, so I think they were the one that we
5 believed had won the other half of this transition.

6 MR. JOHNSTON: Can you go further up.

7 **Q.** Then what's your response?

8 **A.** That they didn't disagree with any of the points that we
9 had raised around our strategy. The only bit that he wanted
10 to negotiate around was the fee.

11 **Q.** Your fee or someone else's fee?

12 **A.** Our fee.

13 MR. JOHNSTON: Further up, please.

14 **Q.** Then what's Ed's response?

15 **A.** Tell them we'll do the whole thing. Tell them not to
16 split it and we'll do it for one basis point instead of 1.25.

17 **Q.** Would that make you more or less money doing the whole
18 thing for one or half of it for 1.65?

19 **A.** Well, it would make us a little bit more money, I guess,
20 yeah.

21 MR. JOHNSTON: Take this down.

22 **Q.** Was there -- so you were the one who agreed on final
23 price with NTMA?

24 **A.** I was the one that had that negotiation with Killian,
25 yeah.

1 **Q.** Did you and Killian negotiate about any other things with
2 the NTMA deal?

3 **A.** No, that was it, you can see from that email chain.

4 **Q.** Was this agreement reduced to writing?

5 **A.** Yes, yeah, it made it into there. We had a master
6 agreement already in place with NTMA, but it made it into
7 their periodic notice, yes.

8 MR. JOHNSTON: Your Honor, we have a call that we
9 want to play. I don't know if --

10 THE COURT: How long is the call?

11 MR. JOHNSTON: Approximately four or five minutes.

12 THE COURT: Go ahead. We'll do that.

13 MR. JOHNSTON: Okay. Let's play Government Exhibit
14 80, please.

15 THE COURT: 80.

16 MR. JOHNSTON: 80, yes.

17 (Voice recording played.)

18 **Q.** Mr. Boomgaardt, who are you speaking with on this call?

19 **A.** Ed Pennings.

20 **Q.** And what are you referring to when you say, "Can I sign
21 that thing for NTMA"?

22 **A.** That's the periodic notice. I had a draft of the
23 periodic notice that had come from them, and I'm asking him,
24 I wasn't an authorized signatory, if Ed was in the office. I
25 would only be if he designated me as such before he left.

1 Q. And why isn't he in the office? What day is this?

2 A. It's Christmas Eve.

3 Q. 2010?

4 A. 2010.

5 Q. What do you mean when you say, "They are not doing the
6 whole thing, no, so it is the 4.8 billion at 1.65"?

7 A. That they, as I indicated previously, they were dividing
8 it in half roughly between us and another transition manager.

9 Q. So what is the reference of 1.65?

10 A. The 1.65 is the 1.65 basis point fee that we had agreed.

11 Q. The flat fee?

12 A. The flat fee.

13 Q. Directing your attention to where Mr. Pennings says, "We
14 just need to be very, very creative, which we will." What do
15 you understand him to mean there?

16 A. We have to be creative about how we're going to make
17 money out of this. We're not going to make much money at
18 1.65, so we need to be creative about how we were going to go
19 that.

20 Q. And how were you going to do that?

21 A. By using the same plan we had in the previous ones, by
22 charging a commission on bonds and eventually finding a way
23 to do it on equities as well.

24 Q. In this scenario did you believe the client was aware of
25 what you were going to do?

1 **A.** No, no. We had led them to believe quite clearly that we
2 weren't going to charge any commissions on bond and equity
3 trading.

4 (Voice recording played.)

5 **Q.** Mr. Boomgaardt, what is Mr. Pennings referring to when he
6 says, "Just check it and make sure it is reflective and
7 doesn't say anything about not taking any spreads because we
8 are going to have to in the U.S."?

9 **A.** That we are going to take -- we're going to take
10 commissions on this anyway, and so make sure it doesn't say
11 that we're not allowed to.

12 **Q.** But I thought you had already quoted zero commissions?

13 **A.** We did.

14 **Q.** So then why were you looking into the agreement for
15 additional language?

16 **A.** Well, just to see whether that agreement covered the
17 possibility of us in any way taking spreads, commissions in
18 any other way on these trades rather than explicit
19 commissions.

20 **Q.** Was there any discussion with the client about there
21 being spreads?

22 **A.** No, no, there wasn't.

23 **Q.** And what was your understanding of why there was no
24 discussion about spreads when you talked to Killian Buckley?

25 **A.** Because we were pretty clear to them that we weren't

1 going to be charging commissions on these.

2 **Q.** Is there any difference between spreads and commissions
3 in this context?

4 **A.** No. They're synonymous. I mean, spreads are just
5 undisclosed commissions, but by the very nature of
6 undisclosed commissions, if you disclose them, they're not
7 undisclosed anymore. So no, the client was certainly of the
8 opinion that we were not charging commission.

9 MR. WEINBERG: I object, Your Honor. He can
10 testify to his conversations with the client but not
11 Mr. Pennings that were done in his absence.

12 THE COURT: I don't think he was testifying to
13 Mr. Pennings --

14 MR. WEINBERG: He was testifying about the client,
15 what the client understood --

16 THE COURT: Right. Sustained as to that.

17 To the extent he testified to what the opinion of
18 the client was, that he can't testify to because he doesn't
19 know what the client's opinion is. That's in their head. He
20 can testify to what his understanding is of what they said.

21 Go ahead.

22 **Q.** Mr. Boomgaardt, in any transition notice that you had
23 been a part of, have you seen language that said, "We will
24 not take any spreads"?

25 **A.** Not that language, no, but my -- doing legal agreements

1 and getting involved in negotiation of legal agreements was
2 not generally part of my job. As I said, in these ones, I
3 only signed them because Ed wasn't around. But no, I had
4 never seen language to that effect.

5 **Q.** And did you think that because there wasn't any language
6 in there about not taking spreads that you were allowed to do
7 that?

8 MR. WEINBERG: I object.

9 THE COURT: Sustained as to the form.

10 **Q.** Did you have an understanding about whether the absence
11 of such a phrase allowed you to do this?

12 MR. WEINBERG: I object.

13 THE COURT: Sustained as to the form.

14 **Q.** Did you feel comfortable going forward with this without
15 that language being there?

16 MR. WEINBERG: I object.

17 THE COURT: Sustained as to the form.

18 **Q.** Did you believe the agreement allowed you to take hidden
19 spreads?

20 MR. WEINBERG: I object.

21 THE COURT: Sustained as to the form. You're
22 asking him leading questions. That's at least part of his
23 objection, as I understand it.

24 **Q.** What did you believe about the agreement and what it did
25 or did not allow you to do?

1 **A.** The agreement didn't -- certainly from the periodic
2 notice, didn't say much about the ability or otherwise to
3 take those spreads. It didn't make me feel comfortable about
4 it, but I don't think it said one way or the other whether
5 you could take spreads or undisclosed commissions.

6 **Q.** What had you led the client to believe at this point?

7 MR. WEINBERG: Objection.

8 THE COURT: Overruled.

9 **A.** The proposal was pretty clear that we weren't -- our
10 proposal was to charge no commissions in equity or fixed
11 income trading and charge a flat fee.

12 MR. JOHNSTON: Continue, please.

13 (Voice recording played.)

14 THE COURT: Are you going to go through the whole
15 call?

16 MR. JOHNSTON: We can continue after the break, but
17 yes.

18 THE COURT: Why don't we pause here. We can pick
19 up in that spot after the break. All rise for the jury. You
20 can take your notebooks but not the transcript books.

21 (Jury exits the courtroom.)

22 THE COURT: Please be seated.

23 You had an issue you wanted to raise, Mr. Weinberg?

24 MR. WEINBERG: Just, it goes back to Exhibit 70,
25 Your Honor. I made a motion to strike.

1 THE COURT: What were you moving to strike?

2 MR. WEINBERG: The generic answers by Mr.
3 Boomgaardt as to what State Street or what others that he
4 understood about a particular agreement or a particular
5 circumstance -- perhaps Mr. Boomgaardt can be allowed to go
6 to the hall during this.

7 THE COURT: Yes. If you want to step out and go to
8 the men's room or something. We won't need you to answer any
9 questions about this.

10 THE WITNESS: Thank you, Your Honor.

11 MR. JOHNSTON: Your Honor, if I may respond, I
12 believe the objection was that he didn't -- the witness
13 testified that State Street promised this. And I mean, we
14 can clarify that he is testifying that as an agent of State
15 Street he sent this proposal containing these representations
16 and he was then the one who signed the agreement. So I mean,
17 I don't think there's any confusion in the record that he is
18 speaking for anyone other than the entity that ends up
19 contracting for this transition.

20 THE COURT: I'm not quite sure I understand exactly
21 what your objection is.

22 MR. WEINBERG: To be precise, Your Honor, go back
23 to the specific question and answer, which I don't have.

24 THE COURT: The reason I overruled at the time is
25 what I understand the testimony to be is that as to this

1 exhibit, or the attachment to the email really is what we're
2 talking about, he was one of the authors of the attachment,
3 that he was part of the group of people who sent it, that
4 they sent it not on behalf of themselves personally but on
5 behalf of State Street, and then when he was saying what they
6 represented, it was his understanding of what they
7 represented, and he wasn't intending to speak for others
8 except to the extent that what they did was on behalf of
9 State Street.

10 MR. WEINBERG: What I'm trying to do is narrow the
11 testimony to what I consider to be appropriate under the
12 rules, which is his specific understanding of a statement he
13 made rather than the understanding of State Street or even
14 more --

15 THE COURT: Yes.

16 MR. WEINBERG: -- the understanding of the person
17 receiving the statement.

18 THE COURT: Right. But I don't think he testified
19 to the understanding of State Street. What my memory is --
20 but you can, either both of you or either one or both can
21 clarify if it you wish. I think what he testified to, what I
22 understood was him testifying to sort of what he understood
23 they were representing, which was on behalf of State Street
24 but not speaking for everyone else. It's a fine line. But I
25 think to the extent there's an issue, you can clarify it on

1 cross or you can clarify it if you wish if you think there's
2 something that needs to be clarified. All right?

3 MR. WEINBERG: Thank you, Your Honor.

4 THE COURT: You're welcome. Anything else?

5 MR. FRANK: Your Honor, just, the objections have
6 been paragraph-long objections in some cases. I understand
7 there needs to be some explanation of what the objection is
8 so the court can rule on it, but I think there's been a fair
9 amount of argument in some of the objections, and so I would
10 just ask that Mr. Weinberg, if he's going to make an
11 argument, it should be at sidebar.

12 There have been objections about, containing
13 statements about how many employees were in particular groups
14 and how many employees are in the organization as a whole
15 and, you know, what Mr. Boomgaardt would have understood
16 about the what the clients understood, and I just think those
17 go beyond what needs to be said in open court.

18 MR. WEINBERG: The truth is I think I've been
19 disciplined in not objecting --

20 THE COURT: It's overruled. I think that while the
21 general rule is don't make lengthy speaking objections, I
22 don't feel like as a general matter that Mr. Weinberg has
23 been violating that. I think there were a couple of times he
24 referred to things that were sometimes sort of practical
25 clarifying facts to explain what he was doing. I take your

1 point and we'll see as we go forward. All right. I'll see
2 you at -- come back at 25 after.

3 (Court in recess at 11:11 a.m.
4 and reconvened at 11:26 a.m.)

5 THE DEPUTY CLERK: The McLellan matter is back in
6 session.

7 THE COURT: Please be seated. Are we ready to go?

8 MR. JOHNSTON: Yes, Your Honor.

9 THE COURT: All right. Go get the jury.
10 Do you think you'll finish today?

11 MR. JOHNSTON: No.

12 THE COURT: How close?

13 MR. JOHNSTON: Probably have another hour tomorrow.

14 THE COURT: Do you know?

15 MR. WEINBERG: I would expect we'd be finished with
16 Mr. Boomgaardt by the end of tomorrow, Your Honor.

17 THE COURT: Okay.

18 MR. FRANK: So should we not have another witness
19 here tomorrow?

20 MR. WEINBERG: (Indicating.)

21 THE COURT: Do you think you'll be done at 1:00 or
22 before 1:00?

23 MR. WEINBERG: Before 1:00, but it's hard to
24 predict. It depends on the -- it depends on factors that I
25 can't predict with enough certainty to tell Mr. Frank not to

1 have another witness.

2 THE COURT: All right.

3 MR. FRANK: I would say, Judge, given the pace, it
4 substantially increases the likelihood that we'll want to
5 stay late next week.

6 THE DEPUTY CLERK: All rise for the jury.

7 (The jury enters the courtroom.)

8 THE COURT: Go ahead.

9 MR. JOHNSTON: Continuing playing the recording,
10 Erin.

11 (Audio plays.)

12 MR. JOHNSTON: Just for the record, we're on
13 Exhibit 80. Exhibit 80, page 3.

14 (Audio plays.)

15 BY MR. JOHNSTON:

16 **Q.** Mr. Boomgaardt, directing your attention to the bottom of
17 page 2 and into page 3, what are you reading aloud to
18 yourself?

19 **A.** The -- the periodic notice that the NTMA had sent
20 through.

21 **Q.** Is that a document that you had drafted?

22 **A.** No. No. It had a standard form, but I guess the
23 particular wording that's in there was drafted by the NTMA.

24 **Q.** And why are you reviewing the periodic notice on the
25 phone with Mr. Pennings?

1 **A.** Well, specifically because he asked to make sure it
2 doesn't say anything about not taking spreads.

3 **Q.** Did you find a phrase that says, "we are not taking
4 spreads"?

5 **A.** No.

6 **Q.** Had you seen such a phrase in any periodic notice before
7 then?

8 **A.** No.

9 **Q.** And how many transitions had you worked on in your career
10 at this point?

11 **A.** Hundreds.

12 **Q.** And why -- what's your understanding of why Mr. Pennings
13 is asking about FX?

14 **A.** There were -- there were discussions around this time
15 about getting recognition for revenue that State Street
16 transition management was bringing in to the FX desk. So
17 transitions often --

18 **Q.** Sorry, can I interrupt you for a second, Mr. Boomgaardt?
19 What do you mean get revenue recognition?

20 **A.** So transitions for State Street, when we would do them,
21 often had foreign exchange as part of them, so we needed to
22 trade currencies, as well as stocks and bonds. That was
23 generally done with State Street's own foreign exchange
24 trading business. So that was a separate business that had
25 its own revenue line. And there were some discussions going

1 on inside State Street about the FX business, recognizing
2 somehow, either by transferring money or at least
3 acknowledging the value of the fact that we're doing that
4 much trading with them.

5 **Q.** So how many of your transition clients had foreign
6 exchange needs?

7 **A.** In Europe, almost all of them. It would be a rarity that
8 we would have to do no foreign exchange on a transition for
9 our European clients. Almost always we would have to do some
10 FX trading.

11 **Q.** Did you know the value of that foreign exchange trades,
12 the value of those foreign exchange trades to that, to the
13 separate business at State Street?

14 **A.** No, I didn't have any visibility or knowledge of how much
15 money they made or lost from our trading.

16 **Q.** Why was that?

17 **A.** It was a separate business unit to mine, so it didn't --
18 there was no -- we didn't get any revenue directly from the
19 foreign exchange trading business. And the conversations
20 about any of that were done higher up than me, certainly not
21 by me, anyway.

22 **Q.** You said you meant -- you testified, revenue that was
23 either gained or lost. Why do you say that?

24 **A.** So the foreign exchange trading business is, to use the
25 used car lot analogy, it is State Street's used car lot. So

1 when we would send an order in to get done, they would have
2 to fill that order. So if we were selling \$100,000,000 to
3 buy euros, they would need to fill that order. And they
4 would either make money or lose money in doing that.

5 They were taking -- if we were selling dollars,
6 they were taking ownership of those dollars. And they then
7 had to sell them in the market, or sell them to another
8 client, and they may do that at a better price, or they may
9 do that at a worst price. But they would -- that risk was
10 sitting with them. They would need to execute our trades and
11 give us that execution.

12 **Q.** You previously testified that State Street, in your
13 words, didn't have its own used car lot. What were you
14 referring to then?

15 **A.** Stocks and bonds.

16 **Q.** So it did have its own used car lot that traded stocks
17 and bonds?

18 **A.** It didn't, no. FX Foreign Exchange was the only
19 principal business that we interacted with at State Street.

20 **Q.** So then when Mr. Pennings is referring to possibly
21 earning money from FX, is that a new development or an old
22 development?

23 **A.** That's a new development, that's him alluding to the fact
24 that there were conversations going on at a higher level
25 about how that gets recognized.

1 **Q.** So what could potentially happen at the, say, end of the
2 year, based on, say, the volume of foreign exchange business
3 or trades that you had sent over to the FX desk?

4 MR. WEINBERG: Objection. Speculative.

5 THE COURT: Overruled.

6 THE WITNESS: I believe those discussions were
7 around the possibility of transferring internal revenue
8 credits or something, so that that was recognized as revenue
9 that was associated to Portfolio Solutions and transition
10 management, rather than just FX trading.

11 **Q.** Did you have any control over what the FX desk made or
12 charged?

13 **A.** Certainly I didn't, nor my desk, no.

14 **Q.** Any of the people that worked right around you?

15 **A.** No.

16 (Audio plays.)

17 BY MR. JOHNSTON:

18 **Q.** Mr. Boomgaardt, directing your attention to the last
19 phrase that we heard from Mr. Pennings, where he says, "we
20 will take a spread out of the small caps and the US
21 equities," what do you understand him to mean there?

22 **A.** That we're going to be taking a -- an undisclosed
23 commission on small cap, which is -- small caps are just
24 small companies, but they're -- just think of them as a
25 specific kind of stock, and US equities, so US stocks.

1 **Q.** Did you have an understanding at the time whether the
2 client had agreed to these spreads?

3 **A.** My understanding was the client hadn't agreed to those
4 spreads.

5 (Audio plays.)

6 BY MR. JOHNSTON:

7 **Q.** Mr. Boomgaardt, directing your attention to where
8 Mr. Pennings says "any sort of spread-taking, that is between
9 you, me, and Ian Holden, and let's not go there with Samina,
10 or anything."

11 What do you understand him to mean?

12 **A.** That we're not talking about taking those -- those
13 undisclosed commissions or spreads outside of him, myself,
14 and Ian Holden in London, and not talking to Samina, who's
15 going to be the lead transition manager, or the main project
16 manager on this.

17 **Q.** Who's Ian Holden?

18 **A.** Ian Holden is the head of trading in Europe.

19 **Q.** Why can't you let Samina know?

20 **A.** I guess the fewer people that know about it, the less
21 likely it is to get out, keeping it -- keeping it tight. You
22 know, transition managers do move companies, they leave, they
23 go other places. There's a genuine concern that this is a
24 deviation from State Street's -- what we pitch to clients,
25 what our selling points are. And we would rather it didn't

1 get out in the market that this is the way we were conducting
2 business.

3 **Q.** Did you end up telling Samina?

4 **A.** No, I don't believe I did.

5 **Q.** Did you sign that periodic notice?

6 **A.** Yes, I did.

7 **Q.** Could we take a look at document, just for the witness,
8 Government Exhibit 79.

9 Do you recognize this document?

10 **A.** Yes, I do.

11 **Q.** What is it?

12 **A.** It is an e-mail from myself to Ed Pennings.

13 MR. JOHNSTON: Your Honor, at this time, the
14 Government moves to admit 79 and 79-1.

15 MR. WEINBERG: I have no objection.

16 THE COURT: Admitted.

17 (Exhibit Nos. 79 and 79-1 admitted into evidence.)

18 MR. JOHNSTON: Permission to publish?

19 THE COURT: Yes.

20 BY MR. JOHNSTON:

21 **Q.** What's the date on this e-mail?

22 **A.** The 24th of December, so Christmas Eve of 2010.

23 **Q.** The same day as that phone call that we just listened to?

24 **A.** Yes.

25 **Q.** And what are you asking Ed Pennings here?

1 **A.** Whether I can sign this transition notice in his absence.

2 **Q.** Let's take a look at the transition notice, 79-1. And
3 specifically, can we look, starting on page 2, go down to the
4 very bottom, where it says "Payment Schedule." And directing
5 your attention to where it says "a fee of 1.65 basis points
6 of the value assets as of the date."

7 Continue to the next page.

8 "That the transition manager gains control over the
9 legacy assets."

10 What is your understanding of the fee that's
11 contained in this -- that's spelled out in this agreement?

12 **A.** That we will charge 1.65 basis points on the value of the
13 assets as valued on the day that we take over control of the
14 assets. So whenever they come into the transition management
15 account.

16 **Q.** They -- what did you want the client to understand with
17 that phrase?

18 **A.** That we would be charging a flat fee and that there
19 wouldn't -- commissions on equity and bond trading would be
20 zero.

21 **Q.** And is that true, you were not going to charge
22 commissions?

23 **A.** No, we were planning to charge commissions, anyway.

24 MR. JOHNSTON: Could we zoom out, please.

25 BY MR. JOHNSTON:

1 **Q.** And just direct you to the signatures at the bottom. Do
2 you recall whether you ended up signing the agreement?

3 **A.** I believe I did, yes.

4 **Q.** Did you participate at all in the execution of this deal?

5 **A.** Yeah. Yup.

6 **Q.** Did that happen right after the periodic notice was
7 signed in December, or did it happen later?

8 **A.** There was some delay on it, in getting all the assets
9 ready for sale at NTMA's end, I believe.

10 **Q.** Who -- what types of assets had to be sold and where were
11 they sold?

12 **A.** It was a global portfolio, so there was trading to be
13 done in Boston, and trading to be done in London.

14 **Q.** So what types of assets were being sold in Boston?

15 **A.** Certainly there were equities being sold in Boston. I
16 believe there was fixed income as part of the NTMA
17 transition, as well, to bonds and stocks.

18 **Q.** Did you participate in instructing traders on how to work
19 out trades?

20 **A.** Yes, I was very involved in the NTMA transition, from
21 trading strategy, right down to talking to traders, yeah.

22 **Q.** So what was your specific role?

23 **A.** I was overseeing the transition from -- overseeing the
24 work that Samina was doing and making sure that all the
25 project management elements of the transition were going

1 according to plan. So there's a lot more to just -- to doing
2 a transition than just trading.

3 **Q.** What types of -- do you know whether commissions were
4 taken on European trades?

5 **A.** I believe they were.

6 **Q.** And who -- do you know who applied those commissions?

7 **A.** Well, again, the commissions would need to be applied by
8 the traders.

9 **Q.** Do you know what type of account, if any, they used to
10 execute those trades?

11 **A.** I believe it was the VWAP account in Europe, as well.
12 But the mechanisms for equities, again, was not my forte on
13 this one. I was busy trying to make sure that the other
14 things were going well. That was being taken care of by
15 others.

16 **Q.** Did you have any discussions with the defendant, Ross
17 McLellan, about using the VWAP account?

18 **A.** Yes.

19 **Q.** When were those discussions?

20 **A.** Prior to trading. I mean, it was made clear. We had
21 lots of discussions around this transition as to how we were
22 going to make money and that the VWAP account would be used.
23 I wasn't party to most of the conversations about what that
24 meant on a day-to-day operational level. It wasn't -- it
25 wasn't something I needed to know.

1 **Q.** What was your understanding of who was directing the VWAP
2 account trading?

3 **A.** Well, that was coming from -- from Ross and from Ed.
4 Those were -- it wasn't the traders, or our team kind of
5 making that up. That was a grade much higher up.

6 **Q.** Did the client ask for a VWAP account to be used?

7 **A.** No, I don't believe they did.

8 **Q.** Did -- you said that some other clients -- you previously
9 testified that these accounts exist to be able to give a
10 volume-weighted average price to a specific client?

11 **A.** That's right, that's right.

12 **Q.** But that you had never done this before for a transition
13 client?

14 **A.** Correct. It was there, ready for -- for other known
15 transition management clients, generally speaking, certainly
16 in Europe, anyway.

17 **Q.** Do you know whether the NTMA was actually given the
18 average price for the day?

19 **A.** I don't believe they were, no.

20 **Q.** And why weren't they given the average price for the day?

21 MR. WEINBERG: Objection. Unless he knows with
22 personal knowledge.

23 THE COURT: Well, overruled. That's true for every
24 question. You can only testify to what you know.

25 THE WITNESS: Generally, in transition management,

1 we are trading to minimize the implementation shortfall, or
2 the overall cost of the trade. That doesn't necessarily mean
3 that we're trying to guarantee volume-weighted average price.
4 The volume-weighted average price doesn't necessarily mean
5 the lowest cost to the client. So it wasn't something that
6 we particularly looked at and it certainly wasn't a specific
7 focus of this transition.

8 BY MR. JOHNSTON:

9 **Q.** What was your understanding of why the VWAP account was
10 used?

11 **A.** My understanding is -- it was used to allow State Street
12 to -- because it was a principal account, it effectively
13 created our own used car lot. We owned those assets for a
14 short period of time, which meant that we could book out just
15 the net price to the clients, so they wouldn't see any
16 commissions that were charged on those, in the same way that
17 they didn't in bond trades when we did them. It allowed us
18 to use an analogous model to what we had in bond trading, to
19 take an undisclosed commission that wouldn't be reported to
20 the client.

21 **Q.** And what had you promised the client in terms of
22 comission?

23 MR. WEINBERG: Objection. This has been asked and
24 answered.

25 THE COURT: Sustained.

1 BY MR. JOHNSTON:

2 Q. When trades are executed, are there anything -- is there
3 some type of trading confirmation that's generated by the
4 bank systems?

5 A. Yes.

6 Q. Who generates them?

7 A. It gets generated out of our -- our back office system,
8 so our trade settlement and reporting system that is
9 connected into the trading systems.

10 Q. And when -- when the transition desk is requesting that
11 trades be made on behalf of a transition client, do you know
12 where those trading confirmations go when they're generated?

13 A. So we, as transition managers, will report the trades
14 that we're doing on behalf of a client directly to the
15 client's custodian, so we do that electronically by a Swift
16 protocol, which is just an agreed format of electronic
17 transfer, so it doesn't need to be touched by people. There
18 are -- and we certainly have the ability to generate manual
19 trade confirmations, as well.

20 But for the vast majority of clients -- and I'm
21 trying to think of anywhere we didn't -- we switched those
22 off and didn't send them to the clients, because they didn't
23 want to get hundreds and thousands of faxes going directly.
24 What they wanted us to do was to report those trades to their
25 custodian, the safe-keeper of their assets, to make sure that

1 the books and records of the custodian accurately reflected
2 what they held and what they had bought and what they had
3 sold.

4 **Q.** Who did the client rely on to get accurate reports of
5 trading results?

6 **A.** From State Street and also from the books and records at
7 their custodian. They expected those to be accurate, as
8 well.

9 **Q.** Do you know whether using a VWAP account would send a
10 confirmation showing a commission that this had been taken on
11 that account?

12 **A.** My understanding is that it wouldn't. But again, I
13 wasn't -- we didn't use the VWAP account very much. So I
14 don't think it would. I think it would be a net price that
15 came off.

16 MR. WEINBERG: Objection. Move to strike, Your
17 Honor. He doesn't have any basis to testify about the --

18 THE COURT: Overruled.

19 BY MR. JOHNSTON:

20 **Q.** Do you know who coordinated the US trades for the NTMA?

21 **A.** Well, in terms of who instructed what to trade, that was
22 done by our desk. But there was certainly an oversight from
23 Ross in Boston at the trading desk, at the time we were
24 trading.

25 **Q.** How do you know that Ross was exercising oversight over

1 the trading?

2 **A.** It was discussed and we talked about it.

3 **Q.** Who discussed this?

4 **A.** Ed, myself, Ross, Ian Holden. It was -- we got to that
5 level of discussion about how we were going to -- how we were
6 going to manage this transition.

7 **Q.** Did you discuss using the VWAP account on those phone
8 calls?

9 **A.** Yes. I mean, we knew it was going to be the VWAP
10 account. Again, it was -- that was clear to me, but not the
11 exact -- the exact mechanics of how it was going to work, but
12 it was clear that that was the account that was going to be
13 used, yes.

14 **Q.** Are you aware of a type of asset called an ETF?

15 **A.** Yes.

16 **Q.** What is an ETF?

17 **A.** An ETF is an exchange-traded fund. That's what ETF
18 stands for. It's -- it allows -- it's similar to a mutual
19 fund, except you can trade it as you would any other stock.
20 So it's listed on, say, the New York Stock Exchange, so you
21 can buy and sell it as an individual security.

22 **Q.** So it's a tradeable security?

23 **A.** It's like a tradeable mutual fund.

24 **Q.** What are sort of the underlying parts of an ETF?

25 **A.** Well, an ETF will -- it's a fund, as an example, there's

1 an S&P 500 ETF. It allows you to buy all of the components
2 of the S&P 500 in one go, so it allows you to buy a portion
3 of the portfolio that holds all of the S&P 500, so all of the
4 underlying stocks in one place.

5 **Q.** So you're saying by buying one security, you can own part
6 of many different securities?

7 **A.** That's right, yeah.

8 **Q.** Do you know whether the NTMA had a holding in an ETF as
9 part of this transition?

10 **A.** Yes, they did.

11 **Q.** What -- was it a small holding, a large holding?

12 **A.** No, they had a large holding in a US-listed
13 exchange-traded fund.

14 **Q.** Do you know the name of that fund?

15 **A.** I think it was a SPDR, so an S&P 500, or it may have been
16 a Russell. It was an US equity ETF.

17 **Q.** Do you know whether, as part of the NTMA transition,
18 there was any type of special trading done around the ETF?

19 **A.** There may have been. You can -- with ETFs, you can
20 either trade them as an individual security -- you also have
21 the ability to break them up and trade them, take receipt of
22 all of the underlying securities that are in those.

23 So again, if you were using the S&P 500, you would
24 get 500 stocks, instead of your one holding, and you could
25 trade those individually. So if the position is big enough,

1 it can make sense to trade that way.

2 MR. JOHNSTON: Now I want to show a document just
3 to the witness.

4 THE COURT: Go ahead.

5 MR. JOHNSTON: All right. Government Exhibit 138,
6 please.

7 BY MR. JOHNSTON:

8 Q. Do you recognize this document?

9 A. Yes, I do.

10 Q. What is it?

11 A. It is an e-mail from Samina Vernon, so the transition
12 analyst that worked in my team to Killian Buckley and others
13 at NTMA, as well as myself and Ed Pennings and others at
14 State Street.

15 Q. And what is attached to this e-mail?

16 A. It's a post-trade report for NTMA.

17 MR. JOHNSTON: Your Honor, at this time, the
18 Government moves to admit 138 and 138-1.

19 MR. GOLDSTEIN: No objection.

20 THE COURT: Admitted. You can publish it.

21 (Exhibit Nos. 138 and 138-1 admitted into
22 evidence.)

23 BY MR. JOHNSTON:

24 Q. Who's Killian Buckley, Mark McCrone, and Mikael
25 Langstrom?

1 **A.** They are all people that work at MTNA.

2 **Q.** And when are the post-trade reports generated?

3 **A.** After we're finished, the trading aspect of the
4 transition.

5 **Q.** Did this transition happen all in one go, or were there
6 multiple parts?

7 **A.** It had multiple tranches, so we did part of it and then
8 there was another part and then another part. I believe it
9 was three tranches in the end, if I remember rightly.

10 **Q.** And do you know what this one corresponds to?

11 **A.** Off the top of my head, I don't know. I would need to
12 look at it and see.

13 **Q.** Did the -- do you recall why this revised post trade is
14 being sent to NTMA? Directing your attention to the first
15 line.

16 **A.** One of the questions they had from ours is that we hadn't
17 included the flat fee specifically in the trading shortfall.
18 We had looked at just the trading cost and hadn't included
19 the flat fee in there.

20 **Q.** So -- and why would they want the fee into the shortfall?

21 **A.** Well, it's a cost to them, so they wanted that included
22 in there. The flat fee, the reason it didn't get in there is
23 our reports ran out of -- information that we got out of the
24 trading system. So it's something -- the flat fee needed to
25 get added back in manual and it didn't on the one that she

1 sent out earlier.

2 **Q.** Did you prepare any role in preparing this post trade?

3 **A.** Not in preparing it, but certainly in overseeing it.

4 Yes. I looked at it before it went out.

5 **Q.** Let's take a look at the post trade 138-1. Do you
6 recognize this document?

7 **A.** Yeah, that's our post-transition report for NTMA.

8 **Q.** Okay. Let's take a look at page 2, please. And if we
9 can zoom in on the box at the bottom.

10 What information have you provided to the client
11 here?

12 **A.** We have given them what our valuation is on the assets
13 that came into transition for that -- for this particular
14 tranche so that was about 1.4 billion euros of value. And
15 then what State Street's fee was based on 1.65 basis points
16 of those assets. The overdraft costs are -- that's
17 sometimes, if we're trading and stocks don't settle when
18 they're supposed to, clients can be charged an overdraft fee,
19 because they're -- they're effectively left with a negative
20 balance in some currency, so we were just paying them back
21 that 8,000 euros to get to a net fee there.

22 **Q.** So what's the amount that you're reporting to the client
23 that you've earned on this trade?

24 **A.** Two hundred and -- well, 228,000 and change was our fee,
25 less the overdraft cost of -- I guess a balance to be paid of

1 228,000.

2 **Q.** Was this in euros?

3 **A.** Yes.

4 **Q.** What did you want the client to understand that number to
5 encompass?

6 MR. WEINBERG: I object, Your Honor.

7 THE COURT: Overruled.

8 You can answer.

9 THE WITNESS: That it was our -- our fee for -- for
10 doing all of the trading and project management exercise.
11 That it was in lieu of any commissions that were being
12 charged, but that was our -- that that was our fee.

13 BY MR. JOHNSTON:

14 **Q.** Is that a true statement?

15 **A.** No. No, it's not.

16 **Q.** Do you know how much you had actually made?

17 **A.** I don't on this particular tranche, but overall, on NTMA
18 again, we made in the millions.

19 **Q.** Let's take a look at page 7, please. And will you go to
20 the box on the right-hand, bottom right.

21 So what information have you set out in this table?

22 **A.** It's -- it's a breakdown of the total cost for this
23 transition.

24 **Q.** And where is -- if any, where is State Street's fee
25 spelled out?

1 **A.** State Street's fee, the flat fee we charge, is the top
2 line of that table.

3 **Q.** And what value have you put there?

4 **A.** 220,000.

5 **Q.** And then the commission costs, at 15,000, what is that
6 supposed to represent?

7 **A.** There are some markets where State Street doesn't have
8 direct access. So in some of the emerging markets, like
9 places like Chile and Peru, and places like that, we would
10 have to get a local broker in those areas to do the
11 transactions for us and have to pay them a commission.
12 That's really what's getting captured in that commission
13 costs column, I believe.

14 **Q.** Are you representing that those are commissions that
15 State Street charged for 10,000?

16 **A.** No, but they are commissions that the client had to pay.

17 **Q.** Okay. And so how do they end up getting past the client?

18 **A.** Well, they get charged by that broker in the execution
19 that comes back. But they are -- those commission costs
20 would be shown as a separate commission line, so that's why
21 we needed to have that column there, or that row there.

22 **Q.** And what do you call these types of commission costs?

23 **A.** Their third-party commissions.

24 **Q.** So third-party commissions, as opposed to State Street's
25 commissions?

1 **A.** Correct.

2 **Q.** And then the -- let's go down to where it says
3 "opportunity costs." Why is that number in a bracket?

4 **A.** Because it's a negative. So a negative means it was a
5 benefit to the client. So they -- in this particular
6 transition, the market went up as they were selling, which is
7 obviously a good thing for them. So they ended up having a
8 very substantial negative -- negative cost. So a very
9 substantial benefit from the market movements.

10 **Q.** And typically, when you do agency trading, who benefits
11 from either upswings in the markets or downturns in the
12 markets?

13 **A.** The client does.

14 **Q.** Are all the commission revenues that State Street earned
15 in this tranche, are they spelled out anywhere here?

16 **A.** They're not spelled out, no.

17 **Q.** Are they sort of numerically captured anywhere?

18 **A.** They are captured in there. So yes, they would be
19 captured in that total cost number, so that includes all of
20 State Street's commissions in there.

21 **Q.** But in which of these categories, say, as opportunity
22 cost or market impact cost, is that -- is the hidden
23 commission folded into?

24 **A.** It would really come out of the opportunity cost in that
25 one. So it would have been. Had we not taken commissions,

1 that would have been an even bigger negative number, so an
2 even bigger advantage to the client.

3 **Q.** So had you not taken the hidden commissions, how would
4 the client's performance have differed?

5 **A.** They would have had an even lower cost to their
6 transition. So yeah, they would have been even better off.
7 What's already quite a good result from the client, from a
8 shortfall perspective, would have been even better.

9 **Q.** Let's take a look at -- I'm sorry, the last question.

10 In laying out the cost like this, did you want the
11 client to know that you had taken these hidden commissions?

12 **A.** No. No.

13 **Q.** Let's take a look at page 68, please.

14 And before we zoom in on anything in particular,
15 what, in general, are we looking at with these rows?

16 **A.** In general, that is the list of the executions that we've
17 done for the client over the course of the transition. So
18 it's a list of what we've -- I was going to say bought and
19 sold, but in this case, they were all sells.

20 **MR. JOHNSTON:** So if you can zoom in, Erin, on the
21 categories at the very top towards the right, just like --
22 yeah, like one column at the time. That's fine. Maybe
23 that's enough for the jurors to see.

24 **BY MR. JOHNSTON:**

25 **Q.** Can you explain what the columns -- or, sorry, the rows

1 that you have here?

2 **A.** Well, so the column, the shares is how many shares we
3 traded, so what was -- how many were sold. The explicit
4 costs would be any commissions charged or taxes and fees and
5 implicit costs are all of the other trading costs, so spread
6 costs, market impact, and opportunity costs. The sum of
7 explicit and implicit will get you to the total cost.

8 **Q.** So the total implementation shortfall?

9 **A.** That's right, yeah.

10 **Q.** What types of fees and costs are typically included in
11 the explicit costs?

12 **A.** The explicit costs is commissions and kind of exchange
13 taxes and fees and those types.

14 **Q.** So if we take a look at one of these actual trades.

15 We can zoom in, Erin, on the one that says the
16 iShares, Russell 2000, not the full column, first, because
17 other the jury will --

18 Do you see that?

19 **A.** Yup.

20 **Q.** So what type of security is that?

21 **A.** That's an ETF, as you were talking about before. That is
22 an exchange-traded fund that holds a portfolio of the Russell
23 2000, so a very broad-based US equity index.

24 **Q.** All right. And if we could move further along, Erin, to
25 see the other numbers associated with that row. What's

1 the -- what do these numbers show?

2 **A.** The first one on the left is the number of shares, so
3 it's about 4.4 million shares of that, so a pretty big
4 position.

5 **Q.** What would that be worth in dollar terms?

6 **A.** I don't know. I would need to see the -- I guess I would
7 need to see the price, which -- which isn't shown on that
8 execution. This is really a cost breakdown, rather than
9 showing the price. It shows what we traded and what the
10 shortfall was that was attributable to each of those things
11 that we traded.

12 **Q.** But how is, generally, a position of 4 million shares in
13 a ETF compare?

14 **A.** It's a big position. That would be -- 4 million shares?
15 It's going to be in the hundreds of millions in value terms.

16 **Q.** And so then directing to where the -- where there is just
17 a dash, which is, I guess, underneath the -- in the direct
18 costs. Why is that empty?

19 **A.** It means there were no exchange taxes and fees and no --
20 no commissions taken.

21 **Q.** Were no commissions taken?

22 **A.** No, there was commissions taken on that trade, yeah.

23 **Q.** And so where would those numbers be folded into?

24 **A.** Into the -- into the implicit costs, so into the
25 2.6 million benefit that you see beside it there.

1 **Q.** So but for the commissions, what would have been the
2 result for the client?

3 **A.** He would have been an even bigger benefit than
4 2.6 million.

5 **Q.** And typically, when you're trading as an agent, you'll
6 get the benefit of a good market performance?

7 MR. WEINBERG: I object. This is asked and
8 answered.

9 THE COURT: Sustained.

10 MR. JOHNSTON: You can take this down, Erin.

11 BY MR. JOHNSTON:

12 **Q.** Mr. Boomgaardt, were there additional, as you say,
13 tranches of this transition?

14 **A.** Yes, they were.

15 **Q.** Do you know whether additional hidden commissions were
16 taken for those tranches?

17 **A.** Yes, there were.

18 **Q.** Do you -- did you play any role in managing those
19 projects?

20 **A.** Yeah. I had a pretty hands-on role for all of the
21 tranches across that NTMA transition.

22 **Q.** Do you know what types of hidden commissions were taken
23 in the other tranches?

24 **A.** Well, it was a -- it was, again, a global trade. I can't
25 remember the specifics of what assets came in for each of

1 those transitions, but the same hidden commissions across
2 equities and bonds that we -- stocks and bonds that we had
3 done previously.

4 **Q.** What about the accounts that you had used?

5 **A.** I mean, we would -- the accounts would be the same as
6 they were for that tranche, be it the VWAP account for
7 equities, or the normal bond trading accounts.

8 **Q.** And just to be clear, in the normal bond trading
9 accounts, you don't need to do anything special?

10 **A.** No, no, that was -- bond trading could be done as normal
11 and there wouldn't be any commissions.

12 **Q.** But for stocks, you needed to use the VWAP accounts, so
13 it won't be seen?

14 **A.** Yes, that's right.

15 **Q.** In that prior document that we saw, where all the
16 individual securities were listed out, had you not used a
17 VWAP account, what would have shown in those explicit cost
18 column?

19 **A.** Well, if we had taken a commission, it would have shown
20 in that column.

21 **Q.** Let's take a look at Government Exhibit 170, but only to
22 the witness, please.

23 Do you recognize this document, Mr. Boomgaardt?

24 **A.** Yes, I do.

25 **Q.** What is it?

1 **A.** It is an e-mail from Killian Buckley at NTMA to Cassie
2 Waller and myself, and several others both at NTMA and State
3 Street.

4 **Q.** And what's the date?

5 **A.** The 24th of June, 2011.

6 **Q.** And is there an attachment to this e-mail?

7 **A.** Yes.

8 **Q.** What is it?

9 **A.** It's the NTMA combined post trade.

10 **Q.** And what does that mean?

11 **A.** I believe it's the post trade that reflects all of the
12 tranches and the full completion of the NTMA transition.

13 **Q.** So sort of a summary report?

14 **A.** Yeah.

15 MR. JOHNSTON: At this time, Your Honor, the
16 Government moves to admit Exhibit 170.

17 MR. WEINBERG: No objection.

18 THE COURT: Admitted. You can publish it.

19 (Exhibit Nos. 170 admitted into evidence.)

20 MR. JOHNSTON: Zoom in on the top, please, Erin.

21 THE COURT: This does not include another exhibit,
22 which is the attachment?

23 MR. JOHNSTON: We're not admitting the attachment.
24 The Government is not seeking to go back into that now.

25 If we could take a look at just the send field.

1 BY MR. JOHNSTON:

2 Q. So who's this e-mail from?

3 A. It's from Killian Buckley at NTMA.

4 Q. And why is he sending it to yourself and Cassie Waller?

5 A. Cassie was the main relationship manager for NTMA and I
6 was involved in the transition.

7 MR. JOHNSTON: Can you just take a look at the
8 bottom of the e-mail. If we could actually just do the
9 numbers, 1 through 6. Yeah, that's great. Yeah. The
10 introductory and then the 1 to 6, please.

11 BY MR. JOHNSTON:

12 Q. What is it that Mr. Buckley is asking you and Cassie
13 Waller?

14 A. He has looked at the post-trade report and had a -- I
15 guess a number of points that he just wanted some
16 clarification on.

17 Q. And what do all those -- in general, do those points
18 relate to? Like what are they? Are they all-around cost?

19 A. They're all cost related. Yes. I'm just reading through
20 the last of them. But yes, they all reference cost in one
21 way or another.

22 Q. And how did you -- what type of result did you deliver
23 for NTMA in this transition?

24 A. From an implementation shortfall perspective?

25 Q. Yes.

1 **A.** It was a good result for them. As I said, they had some
2 favorable market conditions that certainly helped that.

3 **Q.** Are market transitions typically something that State
4 Street's transition team controls?

5 **A.** No, no. There were risks and transitions that we try and
6 manage. But we can't control all of the risks and that was a
7 risk that, happily for them, went in their favor in this
8 transition.

9 **Q.** So it's your testimony that you delivered a good result?

10 **A.** From an operational perspective, I think they were --
11 they were pleased. And it came in at a good implementation
12 shortfall number for them. So, yeah, I think generally it
13 was a successful -- successful transition.

14 **Q.** Is it typical that a client asks you for -- despite
15 having a great result, all these questions about costs?

16 **A.** It's not uncommon for clients to come back and try and
17 understand the cost of the transition, particularly for
18 somebody like the NTMA. I mean, this is a Government
19 organization who has to report to the Parliament in Ireland,
20 so they want to understand that these are not unusual --
21 unusual questions.

22 **Q.** And in looking to number 4, have they asked you about the
23 Russell 2000 iShare?

24 **A.** Yes, they asked about it specifically there.

25 **Q.** And why is it -- what is your understanding about why

1 they're asking about the Russell iShare 2000?

2 **A.** Because it's a big position and it accounted for quite a
3 large proportion of the shortfall that they had.

4 **Q.** So they want additional information?

5 **A.** Yes. They're asking for a bit more information around
6 when and how we traded that one.

7 **Q.** At this point, had you told the client that you had taken
8 hidden commissions?

9 **A.** No.

10 **Q.** When this e-mail was sent to you, did you intend to tell
11 them, in responding to these questions, that you had taken
12 hidden commissions?

13 **A.** No.

14 **Q.** And why didn't you want to tell them?

15 **A.** Well, they're hidden commissions and that was part of the
16 plan. As we discussed, it wasn't to be disclosed to the
17 client. It was done so that they didn't see it.

18 MR. JOHNSTON: You can take it down, Erin.

19 BY MR. JOHNSTON:

20 **Q.** Do you know how much revenue, overall, State Street made
21 in the entire NTMA transition?

22 **A.** Again, I don't know the specifics, but it's in the
23 millions of dollars.

24 **Q.** Another elephant deal?

25 **A.** Oh, yeah. Absolutely. Big one.

1 Q. Were there additional opportunities to charge hidden
2 commissions in the -- in 2011?

3 A. Yes.

4 Q. Are you familiar with a client called Sainsbury's?

5 A. Yes.

6 Q. Who are they?

7 A. Sainsbury's was a pension fund for the company called
8 Sainbury's and Sainsbury's is one of the largest supermarkets
9 in the UK. So this is a pension fund for the employees of
10 Sainsbury's.

11 Q. Have you ever worked with Sainsbury's before?

12 A. Yes, they were an existing client of State Street.

13 Q. How did you come to pitch for their business?

14 A. This one came through -- a consultant approached us on
15 behalf of Sainsbury's.

16 Q. What role do consultants play in the transition business?

17 A. So pension funds often have consultants or advisors to
18 advise them on lots of different things. But for transition
19 management, they specifically would help pension funds to
20 choose a transition manager. So they were important to us in
21 transition management, because we wanted them to consider us
22 for the business that they were advising pension funds to do.

23 Q. When they would come to you initially, would you know who
24 the end client would be?

25 A. Not always. Not always. A lot of times, they would come

1 with a project name or some other way of not disclosing who
2 the client was.

3 **Q.** So when they were working for a client, would you
4 negotiate directly with the client or directly with the
5 consultant?

6 **A.** Both. Some and some.

7 MR. JOHNSTON: I'd like to show the witness,
8 solely, Government Exhibit 84.

9 THE COURT: Yes.

10 BY MR. JOHNSTON:

11 **Q.** If you take a look, Mr. Boomgaardt. Do you recognize
12 this e-mail, Mr. Boomgaardt?

13 **A.** Yes, I do.

14 **Q.** What is it?

15 **A.** It's an e-mail from myself to two people at the
16 consultants, Aon Hewitt, in fact, three people, one CCed, as
17 well.

18 **Q.** What's the date on this e-mail?

19 **A.** The date is the 10th of January, 2011.

20 **Q.** Who is Aon Hewitt?

21 **A.** They're one of the big consultants who advise pension
22 funds on, among other things, which transition manager to
23 use.

24 **Q.** And in this particular instance, who is Aon Hewitt
25 working on behalf of?

1 **A.** In this particular one, it's Sainsbury's, but I'm not
2 sure that we knew that at the time.

3 MR. JOHNSTON: Your Honor, at this time, the
4 Government moves to admit Exhibit 84 and 84.2 into evidence.

5 MR. WEINBERG: No objection.

6 THE COURT: Admitted.

7 (Exhibit Nos. 84 and 84.2 admitted into evidence.)

8 THE COURT: You may publish it.

9 MR. JOHNSTON: Let's zoom in at the top, please.

10 BY MR. JOHNSTON:

11 **Q.** Let's take a look at this e-mail, Mr. Boomgaardt. Did
12 you write this?

13 **A.** Yes, I did.

14 **Q.** And who are you -- who are you directing this to?

15 **A.** To Courtney Wilder and Robert McElvanney, but
16 specifically Courtney. They're both people who worked at Aon
17 Hewitt.

18 **Q.** What's the attachment to this document or to this e-mail?

19 **A.** There are two attachments, I guess. One is a proposal
20 and the second is a specific trading strategy, so more
21 specifically into how we would actually trade this particular
22 transaction.

23 **Q.** Is there any -- any mention of the costs in here?

24 **A.** In the proposal --

25 **Q.** Yes.

1 **A.** -- there certainly would be, yes. That's one of the
2 purposes of the proposal, is to get a -- a fee basis and a
3 proposal for how much we would charge.

4 **Q.** Did a consultant -- did consultants typically care more
5 or less about fees than your -- when you dealt directly with
6 the clients?

7 **A.** They both cared a lot about fees and it's tough to say
8 one more than the other. Fees were an important topic of
9 conversation, negotiation with both consultants and clients.

10 **Q.** Let's take a look at 84.2, please. Do you recognize this
11 document, Mr. Boomgaardt?

12 **A.** Yes, I do.

13 **Q.** What is it?

14 **A.** It is our -- it is the strategy document that was
15 attached to that e-mail that we just saw.

16 **Q.** Let's take a look at page 4, please. Did you -- who did
17 you want to see this document? Who was this intended for?

18 **A.** It's intended for the -- for the consultant, Aon Hewitt.

19 **Q.** And for what purpose?

20 **A.** To convince them that we should be the ones doing this
21 transition for whoever their client is.

22 **Q.** Let's take a look where the first bullet point
23 says "employ an agency trading strategy to ensure best
24 execution."

25 What does it mean to employ -- what's your

1 understanding of what you are trying to communicate to the
2 client?

3 **A.** That we're going to be trading on the client's behalf in
4 the market. And in an agency execution, we will be giving
5 them the same execution we execute in the market, plus or
6 minus any agreed commission.

7 MR. JOHNSTON: Let's take a look at page 5, please.
8 Zoom in just on the table.

9 BY MR. JOHNSTON:

10 **Q.** What information is contained in this table?

11 **A.** That's our -- that's our cost estimate for this
12 transition.

13 **Q.** Is this a bond transaction or a stock transition or a
14 mixed, both?

15 **A.** It's a bond transition. I think there were some
16 derivatives or things involved, but broadly speaking a bond
17 transition.

18 **Q.** And what are the commissions that you have proposed to
19 charge the ultimate client for this -- this transition?

20 **A.** A half a basis point of yields, which, given the
21 information that they provided us, we estimated to be about
22 865,000 pounds.

23 **Q.** So you used commissions when referring to bonds?

24 **A.** Yes.

25 **Q.** Why didn't you use the term markup, markdown, or spread?

1 **A.** Commissions was a term that is equally, as well, used.
2 Markup or markdown or spread are really just the mechanism
3 that we take for those commissions. You know, they're
4 synonymous, really.

5 MR. JOHNSTON: Let's take a look at page 14,
6 please. We can zoom in on the text.

7 BY MR. JOHNSTON:

8 **Q.** I'm going to direct your attention to the sentence that
9 says, "When trading fixed income securities, State Street
10 acts as agents of the client and utilize a multidealer
11 competitive bid process."

12 What's your understanding of what that phrase is
13 trying to communicate?

14 **A.** That we're trading on the client's behalf and we're going
15 out to multiple brokers. We're going to all the used car
16 lots, or many of the used car lots, anyway, to go and find
17 them the best deal.

18 **Q.** And when you see multidealer competitive bid process,
19 what do you mean by it's a competitive bid process?

20 **A.** We will ask several brokers at the same time to quote us
21 a price for a security and the one that comes back with the
22 best price is the one that we execute with.

23 **Q.** What, if anything, is this communicating or trying to
24 communicate to clients about what your compensation will be?

25 **A.** Well, it's -- it's indicating that we act as agent, so

1 implicit in that is we will give them the execution that
2 we're getting as a result of this competitive bid process,
3 plus or minus our agreed commission.

4 MR. JOHNSTON: You can take this down, Erin.

5 BY MR. JOHNSTON:

6 Q. After this proposal, was there any negotiation with Aon
7 Hewitt, or the ultimate client, about fees?

8 A. Yes.

9 MR. JOHNSTON: Let's take a look at Government
10 Exhibit 85, but only for the witness, please.

11 BY MR. JOHNSTON:

12 Q. Do you recognize this document?

13 A. Yes, I do.

14 Q. What is it?

15 A. It is an e-mail from myself to three people at Aon
16 Hewitt.

17 MR. JOHNSTON: Your Honor, at this time, the
18 Government moves to admit Exhibit 85 into evidence.

19 MR. WEINBERG: No objection.

20 THE COURT: Admitted. You can publish it.

21 (Exhibit Nos. 85 admitted into evidence.)

22 BY MR. JOHNSTON:

23 Q. Let's take a look at the recipients of this e-mail. Who
24 are the individual recipients?

25 A. Those are three consultants that worked at Aon Hewitt,

1 that were advising this particular client.

2 **Q.** Let's take a look at the third paragraph, where you
3 say, "We believe this transition will be as much a project
4 management exercise, as it will be a trading exercise and
5 will require the dedication and significant resources. As
6 such, we propose to manage the transition for a flat fee of
7 350,000 pounds."

8 What are you representing to the client here?

9 **A.** That there may not be as much trading involved in this
10 transition as we had originally thought there were. There
11 was some discussions going on about how this transition might
12 work and the most effective way to do this. And because
13 there were some derivatives involved in things that possibly
14 it would mean there wouldn't need to be quite so much
15 trading.

16 **Q.** How were you proposing you earn your commission?

17 **A.** Via flat fee, rather than a trading commission.

18 **Q.** So this was in addition to a trading commission?

19 **A.** No.

20 **Q.** What do you want the client to understand when you
21 suggested that there would be a flat fee?

22 **A.** That we wouldn't be charging any commission in addition
23 to that.

24 **Q.** Now, 350,000 pounds is a lower number than that, if you
25 can recall in that table, when it was listed on a commission

1 of half basis points of yield, it was approximately
2 860,000 pounds?

3 **A.** Yes, that's right.

4 **Q.** What explains the difference?

5 **A.** Well, the transition, I think, as it became known, as we
6 got closer to it on this piece, was going to be an awful lot
7 less trading than what we had -- than what we had
8 anticipated. So that accounts partially for it and that
9 the -- it wasn't going to be a transition, even if we charged
10 a commission that was going to generate the commission like
11 what we had thought it would in the initial pretrade. But
12 secondly is why we wanted to make that flat fee at such a
13 level that we would win the transition.

14 **Q.** Was this a competitive bid?

15 **A.** We assumed it was. I don't know whether it was or not,
16 but we always assume that the consultants are putting us in
17 competition, yes.

18 **Q.** When you suggested a flat fee of 350,000 pounds, is that
19 all you intended to charge?

20 **A.** No, I believe we intended at that point to still take the
21 undisclosed spreads.

22 **Q.** And what was it about this deal that made it a good
23 candidate for that plan?

24 **A.** It was big and bond related.

25 **Q.** How big are we talking?

1 **A.** I can't remember the exact size of the portfolios in this
2 one, but again, it was at least several hundred million,
3 possibly over a billion of trading.

4 **Q.** Who, if anyone, did you discuss proposing a management
5 fee in lieu of commissions?

6 **A.** Well, I spoke to Ed Pennings a lot about this one. Yeah.

7 **Q.** Did you have an understanding whether anyone other than
8 Ed approved of this?

9 MR. WEINBERG: I object.

10 THE COURT: Well, just as to whether he had an
11 understanding?

12 MR. WEINBERG: It's not a predicate for his
13 understanding. If the Government can create a foundation, I
14 have no objection.

15 THE COURT: Overruled. But then you need a
16 foundation if he's going to say what his understanding is.

17 BY MR. JOHNSTON:

18 **Q.** During the time when you're pitching these deals, how
19 often are you communicating with Ed Pennings about what to
20 present to the client?

21 **A.** Ed and I sat very close. I spoke to Ed almost every day,
22 and certainly around these transitions, certainly every day.

23 **Q.** Did -- were there -- did Ed ever relay to you any
24 comments or conversations he had with Ross McLellan?

25 MR. WEINBERG: About?

1 BY MR. JOHNSTON:

2 Q. During this time period.

3 THE COURT: Are you objecting or not? Yes, as to
4 the form?

5 MR. WEINBERG: Yes, Your Honor.

6 THE COURT: Sustained as to the form.

7 BY MR. JOHNSTON:

8 Q. What, if any, conversation did you have with Ed around
9 this proposal?

10 A. About how it was a candidate for using this plan and that
11 he had discussed it farther up the chain with -- with Ross.
12 You know, as much as I spoke to Ed, you know, my
13 understanding and my experience of -- Ed spoke to Ross on a
14 very frequent basis. And on the basis of that, he was -- he
15 assured me that this had Ross's knowledge and understanding
16 and blessing.

17 Q. Would you have done this without understanding that Ross
18 approved?

19 A. That's -- that's difficult for me to suppose. I
20 certainly put a lot of store in Ross. I trusted him and
21 liked him. And yeah, I put a lot of store in the fact that I
22 thought Ross was -- had blessed this and the others.

23 Q. Was this proposal accepted?

24 A. Broadly speaking, I think it was, yeah.

25 Q. Let's take a look at --

1 MR. JOHNSTON: Just for the witness, Exhibit 109.
2 Just the field at the top.

3 BY MR. JOHNSTON:

4 Q. Do you recognize this e-mail, Mr. Boomgaardt?

5 A. Yes, I do.

6 Q. Who is it from?

7 A. It is from Raymond Pestana, who was one of the transition
8 managers that worked for me, to Dean Johnson, who was our
9 main contact at the Sainsbury's pension fund. Copied to
10 myself and Chris Martin, who was the relationship manager in
11 our team from State Street.

12 Q. What date are we talking about here?

13 A. The date is the 28th of February, 2011.

14 Q. So this is approximately a month after those prior
15 e-mails. At this point, had you learned who the ultimate
16 client was?

17 A. Yes. Yeah. Absolutely. We knew Dean Johnson was at
18 Sainsbury's, so yes.

19 MR. JOHNSTON: Your Honor, move to admit Government
20 Exhibit 109 and 109.1.

21 MR. WEINBERG: I have no objection.

22 THE COURT: Admitted. You can publish it.

23 (Exhibit Nos. 109 and 109.1. admitted into
24 evidence.)

25 MR. JOHNSTON: Zoom in at the top, please.

1 BY MR. JOHNSTON:

2 Q. What is Mr. Pestana sending to Dean Johnson?

3 A. He's sending him the signed version of the periodic
4 notice for this transition.

5 Q. And what happens after a periodic notice is signed?

6 A. We start the planning, organizing, and trading of a
7 transition.

8 Q. Did you review the periodic notice before it was signed?

9 A. I didn't, no. But that wasn't -- usually periodic
10 notices were reviewed by sales. They were the ones that had
11 responsibility for them.

12 Q. Were you aware of its contents?

13 A. Broadly speaking, yes.

14 Q. Was that -- as a transition manager, how did you -- how
15 were you supposed to know what were the details of the
16 agreement between the client?

17 A. Well, it was sales' responsibility to tell those to us.
18 I mean, it was -- but I was involved in the negotiations and
19 understood what the fee was going to be and the structure of
20 this particular transition very well, yeah.

21 Q. All right. Let's take a look at the transition notice,
22 109.1, please and we can go to page 2. If we can zoom in on
23 the signatures first.

24 Who is signed on behalf of State Street?

25 A. Ed Pennings.

1 Q. And do you know who is signed on behalf of Sainsbury's?

2 A. It's Dean Johnson.

3 Q. Let's go further up, where it says the "transaction fee."

4 When it says "State Street will charge an agreed
5 management fee of 350,000 pounds for this exercise," what was
6 your understanding of what you and Ed wanted the client to
7 understand?

8 A. That we would charge a flat management fee of 350,000
9 and -- instead of a per-trade commission charge.

10 Q. Is that all the compensation you intended to make out of
11 this deal?

12 A. No.

13 Q. Did you want the client to know that you were going to
14 make additional compensation out of this deal?

15 A. No.

16 Q. What did you want the -- what did you want them to think
17 the 350,000 represented?

18 A. That it was a management fee that was instead of charging
19 commission on the trading.

20 Q. So instead of a per-trade charge?

21 A. Instead of, yeah.

22 MR. JOHNSTON: You can take this down.

23 BY MR. JOHNSTON:

24 Q. Was the per-trade charge applied to this transition?

25 A. Yes, it was.

1 Q. Were you involved in the execution of the trades?

2 A. Yes, I was involved in this one.

3 Q. What types of securities were traded?

4 A. Well, this was a -- this was a bond transition, so they
5 were bonds, yes.

6 Q. Do you know whether this was done -- do you know where
7 they were traded?

8 A. I believe it was a global portfolio, but I would need
9 to -- I would need to have my memory refreshed, I guess, on
10 exactly what the markets were.

11 Q. Do you -- how -- in general, how would you communicate to
12 the various desks as to who should trade what?

13 A. Well, we would -- we would send out an e-mail with our
14 trading instructions to the various traders that needed to be
15 involved, depending on which assets it was to be traded.

16 Q. Do you know what size of commissions were taken on these
17 bond trades?

18 A. I don't recall exactly the commissions, but they were --
19 it was another very good remunerative -- we made lots of
20 money, in the millions again, but I don't remember exactly
21 what the commission charges were off the top of my head.

22 Q. Was this consistent with acting in the best interest of
23 your client?

24 A. No. No, it's not.

25 Q. Was there still another opportunity to charge hidden

1 commissions in this time period?

2 **A.** Yes.

3 **Q.** Are you familiar with a client by the name of Eircom?

4 **A.** Yes.

5 **Q.** Who are they?

6 **A.** They are a pension fund for the employees of Eircom,
7 which is, I guess, a telecommunications company in Ireland.

8 **Q.** Did State Street execute a transition for them in the
9 2011 time period?

10 **A.** Yes. Yes, we did.

11 **Q.** How did State Street land the deal?

12 **A.** Similarly, it came in via a consultant again, a different
13 consultant this time, but in a way very much analogous to the
14 last one that we talked about.

15 **Q.** Do you know which consultant was used in this point?

16 **A.** It was Mercer, I believe, on this occasion.

17 **Q.** Did they play a role any different than the one that Aon
18 Hewitt had played for Sainsbury's?

19 **A.** No, very similar. They were advising the fund on which
20 transition manager to pick, was our understanding of their
21 involvement in this transition.

22 **Q.** Had you interacted with Mercer before?

23 **A.** Yes. Yes. No, we knew them well. They were one of the
24 bigger -- one of the bigger consultants, so we knew all the
25 consultants, certainly the bigger ones quite well.

1 **Q.** Did the way that you presented State Street's business
2 model differ when you spoke to consultants, as opposed to
3 when you presented to clients directly?

4 **A.** No. No. We took the same approach with both.

5 **Q.** Which included representations about what?

6 **A.** Oh, about our agency trading business and elimination of
7 conflicts of interest, and our fiduciary role and all of
8 those things. That was part of the standard State Street
9 transition management pitch.

10 MR. JOHNSTON: I want to now show a document just
11 to the witness, Exhibit 124.

12 THE COURT: Go ahead.

13 BY MR. JOHNSTON:

14 **Q.** Do you recognize this document?

15 **A.** Yes, I do.

16 **Q.** What is it?

17 **A.** It's an e-mail from Cassie Waller to several people at
18 Mercer and myself.

19 **Q.** And what's the date?

20 **A.** 9th of March, 2011.

21 MR. JOHNSTON: Your Honor, at this time, the
22 Government moves to admit Exhibit 124 and 124.1.

23 MR. WEINBERG: No objection.

24 THE COURT: Admitted. You can publish it.

25 (Exhibit Nos. 124 and 124.1 admitted into

1 evidence.)

2 BY MR. JOHNSTON:

3 Q. Who's Cassie Waller? Could you remind us?

4 A. Yes, she's a relationship manager. So she worked for Ed,
5 but was the one with responsibility for Ireland, so hence,
6 this was an Irish client. So she also had responsibility for
7 covering the consultants, so two reasons why she would be
8 involved in this one.

9 Q. Where did she work?

10 A. She worked in London.

11 Q. Who are Andrew Williams, Ben Gunnee, and Helen Baldock?

12 A. They are three people who worked at Mercer.

13 Q. What's attached to this e-mail?

14 A. It is our proposal for this Project Austen, they called
15 it. So we didn't know who the end client was. But they had
16 obviously sent us a list of questions and asked for a
17 proposal, which is what we've come back with here.

18 Q. So you're saying you don't know who the end client was?

19 A. I don't think we knew at this point, no.

20 Q. Did you review the proposal before it was sent by
21 Ms. Waller?

22 A. Yes.

23 Q. Let's take a look at the proposal, which is 124.1. Are
24 we looking at the proposal here, Mr. Boomgaardt?

25 A. Yes, that's the proposal for Project Austen.

1 **Q.** Let's direct your attention to page 4 and let's take a
2 look at the bullet point.

3 MR. JOHNSTON: Just zoom in on the bullet point.
4 You know what? It's slightly blown out. Can you -- just
5 encompassing the last bullet point and the -- below. All
6 right.

7 BY MR. JOHNSTON:

8 **Q.** Were you -- directing your attention to the bottom, where
9 it says, "We take full fiduciary responsibility and you have
10 the assurance that each and every decision taken during the
11 transition is motivated only by what is in your best
12 interest."

13 What are you trying to communicate to the client
14 here?

15 **A.** Well, hopefully it's fairly clear, that we're -- that we
16 are acting in the client's best interest at all times during
17 the transition.

18 **Q.** Did you mean this?

19 **A.** I don't know if at that point we were planning on taking
20 undisclosed spreads on this particular transition or not. I
21 can't recall.

22 **Q.** I mean, in general, working at State Street.

23 **A.** In general, that is the methodology we employed for
24 almost all of our transitions, 90 plus percent, with the
25 exception of the ones that we're talking about -- talking

1 about here.

2 **Q.** Let's take a look at the bottom of page 4, if we can, to
3 the "Proposed Fee" section.

4 When you say, "We propose a flat management fee for
5 this exercise of 4 basis points on the value of assets coming
6 into transition, which equates to 400,000 euros, this flat
7 management fee will be invoiced to the client separately
8 following the transition exercise. Alternatively, if it is
9 the client's preference, this flat management fee can be
10 taken as a capped commission."

11 What are you representing to the client here?

12 **A.** That -- we're proposing a management fee and that we
13 don't mind if it's taken as a -- as something where we
14 invoice them at the end as a flat fee, or we can take it also
15 in the form of a commission where, once we hit that cap of
16 400,000 euros, we'll stop charging commissions.

17 **Q.** Do you know what size of transition we're talking about?

18 **A.** It was several billion, I think, of trading, or a
19 billionish, anyway. I can't remember exactly, but in that
20 order of magnitude.

21 **Q.** Is that a high or low fee for a transition of that size?

22 **A.** Well, actually, we can figure this out. It's about a
23 billion euros, I guess, because we're looking at 4 basis
24 points for the value of the assets, for 400,000, so that
25 equates to a billion euros. That's not really high or low

1 for that, actually. That's -- 4 basis points would be a
2 pretty average commission for something of that size, I
3 guess. If anything, a little bit high actually, but it's not
4 too bad.

5 The thing about a flat fee in a transition that is
6 a billion of assets, you've got a billion to sell and a
7 billion to buy. So it's two billion to trade, in which case
8 you're looking at 2 basis points, which probably takes it
9 down to being quite a low commission, if you're looking on a
10 per-trade basis.

11 **Q.** Who, if anyone, did you discuss this fee proposal before
12 you had --

13 **A.** With Ed Pennings.

14 **Q.** Did you have any understanding of whether this proposal
15 had approval by anyone above Ed?

16 MR. WEINBERG: Objection.

17 THE COURT: Overruled as to that yes-or-no
18 question.

19 THE WITNESS: Yes.

20 BY MR. JOHNSTON:

21 **Q.** How did you have that understanding?

22 **A.** From talking to Ed and the -- what he led me to -- what
23 he led me to believe about who knew about it and who was
24 approving of these things. I did.

25 **Q.** What did he lead you to believe?

1 **A.** Well, he led me to believe that Ross knew about this and
2 approved of this as another candidate for our plan.

3 **Q.** And what was that plan?

4 **A.** Which was to charge undisclosed commissions.

5 **Q.** What did you want the client to believe when you
6 presented this in a proposal?

7 **A.** That we won't be taking any other commissions, only the
8 400,000 in compensation.

9 MR. JOHNSTON: You can take this down, Erin.

10 BY MR. JOHNSTON:

11 **Q.** After this proposal, was there any additional negotiation
12 on price?

13 **A.** Yes.

14 MR. JOHNSTON: Just to show the witness, Government
15 Exhibit 150.

16 THE COURT: Go ahead.

17 BY MR. JOHNSTON:

18 **Q.** Do you recognize this document?

19 **A.** Yes, I do.

20 **Q.** What is it?

21 **A.** It's an e-mail from Cassie Waller to Andrew Williams at
22 Mercer and myself and a few others at State Street.

23 MR. JOHNSTON: Your Honor, the Government moves to
24 admit Government Exhibit 150 into evidence.

25 MR. WEINBERG: No objection.

1 THE COURT: Admitted. You may publish it.

2 (Exhibit No. 150 admitted into evidence.)

3 BY MR. JOHNSTON:

4 Q. Let's take a look at the middle e-mail, please, in this
5 chain. Who's Andrew Williams?

6 A. He's a consultant at Mercer that was working on this
7 transition for Eircom.

8 Q. What has he -- what is he sending to you?

9 A. He is sending me a -- a proposal for a fee arrangement
10 that has sort of a sliding scale. So if the assets are
11 smaller than they think, they will be paying a smaller fee,
12 or if they're bigger, they will be paying all the way up to
13 that 400,000 fee that we had proposed.

14 Q. Do you recall what the ultimate fee that was agreed upon?

15 A. I think it was more or less that structure that we agreed
16 upon.

17 Q. Do you recall the exact number of assets that were -- the
18 size of assets that came in?

19 A. I don't recall exactly, no.

20 Q. So you just recall that this was the sliding scale that
21 was agreed upon?

22 A. That's right.

23 Q. Any other parts of this transition negotiated by Andrew
24 Williams on behalf of Eircom?

25 A. Not that I can remember. I mean, we did go into a lot of

1 detail on trading strategy, but that wasn't a negotiation.
2 It was an explanation.

3 MR. JOHNSTON: You can take this down.

4 BY MR. JOHNSTON:

5 Q. I want to now show you an e-mail.

6 MR. JOHNSTON: Just for the witness, 155.

7 BY MR. JOHNSTON:

8 Q. Do you recognize this e-mail?

9 A. Yes.

10 Q. And what is it?

11 A. It is an e-mail from myself to Ross McLellan.

12 Q. Is it part of a longer chain?

13 A. Yes, I believe so.

14 Q. Is the date May 9, 2011?

15 A. It is, yeah.

16 MR. JOHNSTON: Your Honor, the Government moves to
17 admit Government Exhibit 155 into evidence.

18 MR. WEINBERG: No objection.

19 THE COURT: Admitted. You may publish it.

20 (Exhibit No. 155 admitted into evidence.)

21 BY MR. JOHNSTON:

22 Q. Let's start with the second-to-the-bottom e-mail, please.

23 Mr. Boomgaardt, directing your attention to what
24 you say, "Eircom is kicking off in anger tomorrow."

25 What are you talking about?

1 **A.** That means -- it just means that we're starting to trade
2 Eircom tomorrow. So clearly the transition had already
3 started from a planning and strategy point of view, but we're
4 going to start trading it tomorrow.

5 **Q.** Where does the term "kicking off in anger" come from?

6 **A.** It's just a -- a turn of phrase, possibly a Britishism.
7 I don't know -- I get lost between what's Canadian and what's
8 British, now that I've lived in England for 20 years. So --
9 but all that's meant to portray is that we're going to be
10 starting to trade it the next day.

11 **Q.** Why are you sending this e-mail to Mr. McLellan?

12 **A.** I think we need to look at the rest of the chain, but I
13 think we're talking about revenue estimates for what deals we
14 have coming up.

15 MR. JOHNSTON: Let's take a look further down,
16 Erin.

17 MS. LEAHY: I apologize.

18 MR. JOHNSTON: That's all right. Maybe on page 2.
19 We can zoom in on the bottom e-mail.

20 BY MR. JOHNSTON:

21 **Q.** What's Mr. McLellan asking you?

22 **A.** He is looking at our deal calendar. So we kept a list of
23 what we had for upcoming transitions and the calendar that he
24 was looking at said -- it didn't have anything in for any
25 transitions coming in the next couple weeks from our desk,

1 just asking me if that was correct.

2 **Q.** Was this standard or atypical?

3 **A.** I didn't get a lot of e-mails directly from Ross about
4 these things, no. But occasionally he would ask me questions
5 like this, but it wasn't a regular occurrence.

6 **Q.** Who, typically, did he reach out to, if he had questions
7 about --

8 **A.** Ed. Ed was his main contact. They spoke an awful lot
9 more frequently than I did with him.

10 MR. JOHNSTON: Let's go to the next e-mail, please.

11 BY MR. JOHNSTON:

12 **Q.** What is your response?

13 **A.** I say, "No, no, that's not right. I'll get our business
14 analyst to update it, so that it's reflective."

15 **Q.** What's TIM?

16 **A.** TIM is our Transition Information Management system, so
17 it was where we kept track of what transitions were upcoming,
18 what we had going on, and what we had done.

19 MR. JOHNSTON: Let's take a look at the next page,
20 please, Erin.

21 BY MR. JOHNSTON:

22 **Q.** So what is he responding to you with?

23 **A.** "Yeah, didn't think you weren't busy. I thought you had
24 some transitions on the go over there."

25 MR. JOHNSTON: Take that down, please.

1 BY MR. JOHNSTON:

2 Q. And then we don't need to go and look at the kick it back
3 in anger. So let's just jump back up to the next one.

4 What is -- what does Ross say to you after that
5 e-mail where you say Eircom is kicking off in anger?

6 A. He's saying that that deal got a little smaller, didn't
7 it? But revenues are still looking about 1 million.

8 Q. Is 1 million the fee that you had quoted in Sainsbury's?

9 A. No.

10 Q. Now, that was in pounds --

11 A. This is Eircom, not Sainsbury's.

12 Q. Eircom. Not pounds. Euros. Do you know what -- what
13 the conversion rate at the time -- the exchange rate was
14 between dollars and euros?

15 A. I don't off the top of my head, but they're not that far
16 apart. So it would be a little bit more in dollars, but not
17 dramatically so.

18 Q. Did you believe that -- what was your understanding about
19 how much you were going to be earning on Eircom?

20 A. Well, I knew we were going to be -- at that point, that
21 we were going to be employing our plan and taking undisclosed
22 commissions on it. So making revenues of 1 million seemed
23 reasonable and probably -- probably a little bit small,
24 actually.

25 Q. What was your understanding of why Mr. McLellan is giving

1 you the estimate of 1 million?

2 **A.** Well, because he knew about the transition and about how
3 we were going to be taking our -- how we were going to be
4 taking our revenues on that.

5 **Q.** Did this come as a surprise to you?

6 **A.** No.

7 **Q.** All right. Now let's go to the last e-mail. What are
8 you -- what's your response?

9 **A.** Just yes. "Yup."

10 MR. JOHNSTON: You can take this down.

11 BY MR. JOHNSTON:

12 **Q.** Do you know where this 1 million revenue target came
13 from?

14 **A.** I don't know where it came from particularly, no. But it
15 was -- we knew we were going to take -- that we were going to
16 be taking undisclosed -- undisclosed spreads on it, so it was
17 just an estimate, that was all. Nothing more than a
18 placeholder in that system, I believe.

19 **Q.** Had you decided on the 1 million?

20 **A.** No, it certainly wasn't -- it certainly wasn't me. That
21 was a number that I got from Ed.

22 **Q.** Was a million a large or small amount for a transition of
23 this size?

24 **A.** Any time we make more than a million, it's a -- it's a
25 big deal, yeah. A million is good.

1 Q. Did you participate in the execution of this transition?

2 A. Yes.

3 Q. And what role did you play?

4 A. Again, I was pretty hands on with this transition. It
5 was a very unusual -- it was a very unusual transition and so
6 it needed a bit of expertise on the trading side of it. But
7 yes, I was involved.

8 Q. And why do you say it was so unusual?

9 A. It was -- the client was buying a very concentrated
10 number, so a small number of very long-dated European
11 Government bonds. And they had a very specific yield target,
12 so they wanted to -- which really translates into a very
13 specific price that they needed to beat, in order to -- in
14 order to execute the bonds. If we couldn't match their
15 price, we weren't to execute. And they did it in a couple of
16 different -- a couple of different tranches, which is an
17 unusual method -- an unusual portfolio to be buying and an
18 unusual trading methodology as well.

19 Q. Did any of that come as a surprise to you before you
20 started the transition?

21 A. No.

22 Q. In the topic of discussion with the client?

23 A. Yeah, specifically, we had lots of discussions about what
24 the best strategy was to be able to hit that for him.

25 Q. Were you aware of this strategy before you quoted the

1 price?

2 **A.** Not specifically. It evolved from there, for sure.

3 **Q.** How about before you agreed upon the price?

4 **A.** Yes. Yeah, we knew it then.

5 **Q.** What types of assets, at the end of the day, were traded
6 as part of this transition?

7 **A.** Mainly European Government bonds, certainly on the buy
8 side of this, anyway.

9 **Q.** Where would the trade for that happen?

10 **A.** In London.

11 **Q.** Do you know how much you ended up making on this
12 transition?

13 **A.** Again, I don't know the exact numbers, but more than a
14 million dollars.

15 **Q.** Was there -- any of that revenue consistent with acting
16 as your client's agent?

17 **A.** No.

18 **Q.** How about as their fiduciary?

19 **A.** No.

20 **Q.** Now, you testified earlier that you didn't do this on
21 every type of transition, correct?

22 **A.** Yes, that's right.

23 **Q.** Were there any -- and you would discuss this with whom in
24 London?

25 **A.** Ed Pennings and the management team.

1 **Q.** What -- at this point, what's keeping you from doing --
2 deploying this plan a little more widely?

3 **A.** The desire for -- for it not to get out in the market, to
4 keep it -- to keep it quiet. As I said, it was a departure
5 from the way that we sell ourselves to State Street. And we
6 didn't want to have -- we wanted the ability to still sell
7 ourselves that way. So the fewer people that knew about
8 that, the less chance that it had getting into the market.

9 **Q.** So all the other people, the other clients that you
10 didn't charge hidden commissions, did you want them to know?

11 MR. WEINBERG: Objection. Leading.

12 THE COURT: Sustained as to the form.

13 BY MR. JOHNSTON:

14 **Q.** What, if anything, did you want the other clients that
15 you engaged with to know about this practice?

16 **A.** Well, we didn't want them to know about it at all. We
17 wanted them to still believe the State Street pitch of we act
18 as your agent, your fiduciary, and all of those things that
19 we put in our proposals and marketing pitches.

20 **Q.** And in what circumstances would you not do that?

21 **A.** The circumstances where we would take an undisclosed
22 commission? Is that what you're asking?

23 **Q.** In what circumstances were you not acting as your
24 client's --

25 MR. WEINBERG: Your Honor, it's been asked and

1 answered.

2 THE COURT: Sustained.

3 BY MR. JOHNSTON:

4 Q. Were there other opportunities that came up to deploy
5 this plan?

6 A. Yes.

7 Q. Are you familiar with a client called Royal Mail?

8 A. Yes.

9 Q. Who are they?

10 A. They are a pension fund for the workers at Royal Mail.
11 Royal Mail is kind of the UK equivalent of the US Postal
12 Service, so the postal service in the UK.

13 Q. How did you come to pitch for their business?

14 A. Royal Mail, I believe, came through a consultant, as
15 well. Although, I could be wrong. It is certainly that came
16 to us and was -- we were asked to pitch for.

17 Q. By whom?

18 A. I believe it came from a consultant, but I could be
19 wrong. It may have come directly by the -- directly in from
20 the client, as well. But we -- my team would hear about it
21 certainly through the sales team, Ed's team.

22 Q. Had you worked with Royal Mail before?

23 A. I'm not sure we had. I don't know if I had particularly.

24 Q. I want to show you an e-mail.

25 MR. JOHNSTON: Just for the witness, Government

1 Exhibit 91.

2 Zoom in on the top, please.

3 BY MR. JOHNSTON:

4 **Q.** Who is this e-mail from?

5 **A.** It's from Ed Pennings to Ian McKnight and Heath Mottram
6 at Royal Mail.

7 **Q.** Did you receive this e-mail?

8 **A.** Yes, I'm copied on it.

9 **Q.** What's the date?

10 **A.** February 9, 2011.

11 MR. JOHNSTON: Your Honor, at this time the
12 Government moves to admit Exhibit 91 and 91-1.

13 MR. WEINBERG: No objection.

14 THE COURT: Admitted and you may publish it.

15 (Exhibit Nos. 91 and 91-1 admitted into evidence.)

16 BY MR. JOHNSTON:

17 **Q.** What have you attached to this e-mail -- or sorry -- has
18 Mr. Pennings attached to this e-mail?

19 **A.** Attached to the e-mail is our pretrade analysis, both
20 equities and bonds for -- as well as a proposal to -- they
21 had obviously had a specific series of questions and asked us
22 to provide an analysis, as well. So this is our response to
23 that.

24 **Q.** Is this before you had landed the deal?

25 **A.** Yes.

1 Q. What's the significance of the term "Project Arnold"?

2 A. It's a code name, so that the name of Royal Mail isn't
3 attached to it in our communications, so that we're also
4 talking internally about a project name rather than a
5 specific client.

6 Q. Let's take a look at the proposal, but before we do, did
7 you play any role in preparing the proposal?

8 A. Yes. Yeah.

9 Q. Did you review it before it was sent out?

10 A. Yeah. And certainly the analysis was done by my team.

11 Q. Let's take a look at 91.1. Do you recognize this
12 document?

13 A. Yup. That's -- that's the proposal that we prepared for
14 that project.

15 Q. Let's take a look at page 5, please. All right. Let's
16 look at the second paragraph under the 1.2.

17 Directing your attention to where it says "State
18 Street's transition management model is unique in the
19 industry. The model is a hybrid between a buy-side
20 investment manager and an un-conflicted agency-only
21 broker-dealer."

22 What are trying to indicate to the buyer here?

23 A. That we have a unique way of providing transition
24 management services, that we can have all the advantages of
25 asset managers and also can act as an un-conflicted agency,

1 only, so we don't have the conflicts that some of the
2 investment banks do.

3 **Q.** With --

4 **A.** With trading with your own principal books. They're
5 just -- we set ourselves up to be conflict free.

6 MR. JOHNSTON: You can zoom out, please. And could
7 we go to the paragraph that starts with "fixed income,"
8 further down?

9 BY MR. JOHNSTON:

10 **Q.** Directing your attention to where it says "State Street
11 employs a purely agency approach to fixed income trading."

12 What are you trying to communicate to the client
13 there?

14 **A.** That we're trading bonds purely on their behalf and that
15 they will get the executions that we do in the market, plus
16 or minus any commissions that we're going to be charged.
17 That's the agency approach.

18 MR. JOHNSTON: We can take this down, please.

19 Let's go to page 6. Let's go to the second
20 paragraph, after where it says "equity."

21 BY MR. JOHNSTON:

22 **Q.** I'm going to direct your attention to the phrase "our
23 in-house agency securities trading desk."

24 What are you trying to communicate to the client
25 with that phrase?

1 **A.** That our execution desk, our trading desk is an agency
2 trading desk. It trades --

3 **Q.** And you say -- sorry for interrupting you.

4 What about the term "in-house"?

5 **A.** That is part of our team. That they're an integral part
6 of what we're doing in transition management.

7 **Q.** And who are those people? Have any of those names come
8 up so far in your testimony?

9 **A.** Yeah. I mean, so Ian Holden was the head of our in-house
10 securities trading desk in London.

11 **Q.** What about in Boston?

12 **A.** In Boston, yeah. All the fixed income traders that we've
13 talked about were all sitting as part of that agency
14 securities trading desk.

15 THE COURT: I'm going to stop you here.

16 Ladies and gentlemen, we're going to break for the
17 day. Thank you for your attention. Don't discuss the case
18 among yourselves, don't discuss it with anyone else, don't do
19 any independent research. Please leave your transcript
20 notebooks there.

21 All rise for the jury.

22 (The jury exits the courtroom.)

23 THE COURT: So we'll resume tomorrow morning,
24 unless something's changed. It sounds like it should be
25 reasonable for the Government to have a witness, because you

1 might get done before 1:00.

2 MR. WEINBERG: I might. I don't want to guarantee
3 the Court.

4 THE COURT: I understand, but I don't want to send
5 them home early.

6 In terms of the scheduling issue that you
7 mentioned, Mr. Frank, does it make the most sense for you to
8 think about that, talk to Mr. Weinberg, and then discuss that
9 tomorrow, either in the morning or at break?

10 MR. FRANK: We can do that, Your Honor.

11 THE COURT: I mean, you're thinking more about next
12 week than this week?

13 MR. FRANK: Definitely next week, Your Honor. We
14 have some witnesses coming in from Europe next week and our
15 next witness is Mr. Pennings, and I expect that --

16 THE COURT: After this one?

17 MR. FRANK: Correct. So I expect that between the
18 cross-examination -- actually, the witness should probably
19 not be here for this.

20 THE COURT: Sure, we'll excuse you, Mr. Boomgaardt.
21 You're probably happy to walk out of here.

22 THE WITNESS: Thank you, Your Honor.

23 (The witness exits the courtroom.)

24 MR. FRANK: Sorry, Judge.

25 THE COURT: That's quite all right. I don't think

1 we revealed any great secrets to him that Mr. Pennings is
2 testifying in this case.

3 MR. FRANK: I don't think it's a great secret.
4 Between the -- finishing the direct, which is --

5 MR. JOHNSTON: At least an hour.

6 THE COURT: All right. Must be close? How many
7 more deals are there?

8 MR. JOHNSTON: Well, there's only one more deal,
9 but there's a bunch of phone calls. I would say at least
10 six, that some of which are a little longer that -- you know,
11 we're going to try to move fast with them, but this obviously
12 takes longer than you expect.

13 MR. FRANK: Well, perhaps not than you expected,
14 but we expected.

15 THE COURT: It definitely takes longer than I
16 expected. I thought we would be done by next week.

17 MR. FRANK: These are our longest witnesses by far.

18 THE COURT: Right.

19 MR. FRANK: So I'm -- Mr. Pennings' testimony is
20 long and I expect that the cross-examination will be long, as
21 well, and because these witnesses are coming in and we're not
22 sitting next Thursday, we'd like to get them out.

23 THE COURT: So I guess the thing to talk about
24 is -- talk to each other about when -- what days would make
25 sense -- I guess there's two things I'm thinking about, the

1 overall schedule of hitting the date that we told the jury
2 they'd get the case. I know it's early, so you don't
3 necessarily know who you're calling in defense, but you
4 must -- I'm sure every day you're getting a clearer idea of
5 what -- where the Government is going, to the extent that you
6 didn't have a clear idea before the opening.

7 So we should think about that, because when I
8 ask -- tell them that they're staying in the afternoon, I'd
9 like to give them some sense like are we suddenly going
10 afternoons every afternoon in order to make June 27th? Are
11 we thinking it's a few? In other words, this is like the --
12 like what I --

13 The person I don't want to be is the gate agent
14 that says your plane is delayed, no idea why, no idea when it
15 will go, no idea when I'll talk to you again. I'd like to
16 give them clear answers, clear explanations as to sort of
17 what if it's every day, if it's a couple times. Whatever
18 they need, so they understand.

19 MR. FRANK: The Government believes in
20 transparency, as well, Your Honor. I would say --

21 THE COURT: In fairness to the gate agent, it may
22 not be his or her fault.

23 MR. FRANK: Well, I'll talk to Mr. Weinberg. I'm
24 pretty confident it would be Tuesday. It may be Wednesday
25 and there's a question of whether we would need more than

1 that, like Monday.

2 THE COURT: So basically what you want to do is
3 have Pennings done by Wednesday when we're done?

4 MR. FRANK: I would like to have Pennings done -- I
5 would like the other witnesses to be out --

6 THE COURT: You have other witnesses from Europe,
7 too?

8 MR. FRANK: Correct.

9 THE COURT: So you'd like to have all of those
10 European witnesses --

11 MR. FRANK: Wrapped up by Wednesday.

12 THE COURT: Why don't you talk to each other about
13 that and what afternoons we would have to do. And then
14 whether you think that would implicate doing afternoons after
15 that or not, so that I can sort of --

16 MR. FRANK: My only view, Your Honor, is if we can
17 get done with those witnesses by Wednesday, we shouldn't need
18 other afternoons. That's my hope.

19 THE COURT: You think that's right?

20 MR. WEINBERG: Yes, I think if the Government is --
21 you know, I don't know when -- you know, if we finish with
22 Mr. Boomgaardt tomorrow or Friday morning, I think what Mr.
23 Frank is saying is that Mr. Pennings would take the remainder
24 of Friday into Monday. And what I would suggest, you know,
25 subject to talking to Mr. Frank, is that if there's going to

1 be any late days they not be Monday; they instead be the days
2 that these shorter witnesses are on and off.

3 THE COURT: So talk to each other.

4 MR. FRANK: I hear that.

5 THE COURT: So talk to each other about that and
6 then tell me what you want to do in the morning and then we
7 can give them -- that's giving them reasonable notice in
8 advance, which is fine.

9 Okay. Those direct questions, you see how much
10 better you get from the witness, when you ask him what, and
11 then he told you, very clearly, what I think you were looking
12 for. It's not always easy, I understand, but it is usually
13 more effective. And I think they like it better, the jurors,
14 both because the questions are shorter and the -- and the
15 answers come from the witness. So okay.

16 Have a great afternoon, we're adjourned. See you
17 tomorrow morning at 8:30.

18 THE DEPUTY CLERK: This matter is adjourned.

19 (Court in recess at 1:07 p.m.)
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CERTIFICATE OF OFFICIAL REPORTER

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certify that pursuant to Section 753, Title 28, United States
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Conference of the United States.

Dated this 6th day of June, 2018.

/s/ RACHEL M. LOPEZ

/s/ KELLY A. MORTELLITE

Rachel M. Lopez, CRR
Kelly A. Mortellite, RMR, CRR
Official Court Reporter